

Form 7500

**General Provisions
for Subcontracts
Definitions/Preamble/
Section A**

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LOS ALAMOS
National Laboratory

Los Alamos, NM 87545

LOS ALAMOS NATIONAL LABORATORY FORM 7500

GENERAL PROVISIONS FOR SUBCONTRACTS

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Form 7500, Definition of Terms and Preamble

Definitions

As used in this form, the following terms have the meanings stated:

- (a) *Government Contracting Officer* — a representative of the Government with the authority to enter into, administer, and/or terminate Government contracts and make related determinations and findings.
- (b) *DEAR* — The Department of Energy Acquisition Regulation.
- (c) *DOE* — The United States Department of Energy.
- (d) *FAR* — The Federal Acquisition Regulation.
- (e) *Goods* — All tangible property, except land or interest in land, and including tooling, equipment, materials, supplies, etc., required for or produced in the performance of the subcontract.
- (f) *Government* — The government of the United States of America.
- (g) *Subcontract* — A subcontract is a legally binding agreement issued under the Prime Contract and between the University and a third party that contains the essential terms and conditions under which goods or services will be furnished to the Laboratory.
- (h) *“Head of Agency”* — Means The Secretary, Deputy Secretary, or Under Secretary of the United States Department of Energy.
- (i) *Subcontractor* — The party entering into the subcontract with The Regents of the University of California.
- (j) *Lower-tier subcontractor* — An individual or legal entity that has entered into an agreement with a Subcontractor for the delivery of goods or services necessary for the Subcontractor's performance of the subcontract.
- (k) *University* — The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 for the Department of Energy.
- (l) *Contract Administrator* — The representative of the University of California authorized to address contractual issues, and execute and/or administer subcontracts on behalf of Los Alamos National Laboratory.
- (m) *Schedule* — Sections A through G of the subcontract document.

Preamble

- (a) Pursuant to the terms of Contract W-7405-Eng-36, the University has agreed to appropriately treat requirements of federal statutes and Presidential executive orders in procurements using funds provided under the contract. Consequently, many of the standard terms and conditions contained herein are similar to terms and conditions used by federal agencies. However, the University is not a federal agency or instrumentality; the use of similar terms and conditions is only for the administrative convenience of the University.

- (b) The Subcontractor shall furnish the goods and/or services covered by the subcontract subject to all the terms and conditions set forth in the subcontract , which the Subcontractor, in accepting the subcontract, agrees to be bound by and to comply with in all particulars, and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance of shipment of all or any portion of goods or the performance of all or any portion of the services covered by the subcontract shall constitute unqualified acceptance of all University general provisions. The terms of any proposal referred to in the subcontract are included and made a part of the subcontract only to the extent of specifying the nature of the goods or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the general provisions of the subcontract.
- (c) This form incorporates one or more FAR and/or DEAR clauses by reference. The version of the FAR and/or DEAR clause in effect as of the effective date of the subcontract shall apply with the same force and effects as if they were given in full text. Upon request, the contract administrator will make the full text of the clauses available.

Form 7500, Section A

Section A Clauses Apply to All Subcontracts.

Unless specifically cited in the Schedule as not applying or identified in the clause as being self-deleting, the clauses listed below shall apply to all subcontracts into which this document is incorporated.

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A1, Affirmative Action for Handicapped Workers (Incorporated by Reference) (FAR 52.222-36)

(This clause applies if the subcontract exceeds \$2500.)

A2, Affirmative Action for Special Disabled and Vietnam Era Veterans (Incorporated by Reference) (FAR 52.222-35)

(This clause applies if the subcontract exceeds \$10,000.)

A3, Anti-kickback Procedures

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, jointstock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract" as used in this clause, means a contract or contractual action entered into by prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-

- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.
- (c) (1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

- (2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
- (3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all lower-tier subcontracts under the subcontract which exceed \$100,000.

A4, Assignment of Claims

- (a) The subcontract or any right, remedy, or obligation hereunder is assignable in whole or in part by the University to the Government or its designee. Under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereinafter referred to as the Act), the Subcontractor may assign its rights to be paid amounts due or to become due because of the performance of the subcontract to a bank, trust company, or other financial institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any bank, trust company, or other financial institution.
- (b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under the subcontract and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of the subcontract.
- (c) The Subcontractor shall not furnish or disclose to any assignee under the subcontract any classified document, including the subcontract or information related to work under the subcontract until the University authorizes such action in writing.

A5, Assignment of Subcontracts

The subcontract or any right, remedy, or obligation arising out of the subcontract is assignable in whole or in part by the University to the Government or its designee. Except as to any payment due hereunder, the subcontract is not assignable by the Subcontractor without the written approval of the University.

A6, Buy American Act - Supplies

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

- (b) **Definitions.**

"Components," as used in this clause, means those goods incorporated directly into the end products.

"Domestic end product," as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

Components of foreign origin of the same class or kind as the products referred to in subparagraph (c)(2) or (c)(3)

of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End products," as used in this clause means those goods to be acquired for public use under the subcontract.

(c) The Subcontractor shall use only domestic end products, except those

- (1) For use outside the United States;
- (2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (3) For which the applicable federal agency determines that domestic preference would be inconsistent with the public interest; or
- (4) For which the applicable federal agency determines the cost to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the FAR.)

A7, Clean Air and Water (Incorporated by Reference) (FAR 52.223-2)

(This clause applies if the subcontract is expected to exceed \$100,000.)

A8, Convict Labor (Incorporated by Reference) (FAR 52.222-3)

A9, Covenant Against Contingent Fees

- (a) The Subcontractor warrants that no person or agency has been employed or retained to solicit or obtain the subcontract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul the subcontract without liability or, in its discretion, to deduct from the subcontract price or consideration or otherwise recover the full amount of the contingent fee.
- (b) **Definitions.** *"Bona fide agency,"* as used in this clause means an established commercial or selling agency, maintained by a subcontractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds itself out as being able to obtain any Government contract or University subcontract through improper influence.

"Bona fide employee," as used in this clause means a person employed by a subcontractor and subject to the subcontractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts or University subcontracts nor holds out as being able to obtain any Government contracts or University subcontract through improper influence.

"Contingent fee," as used in this clause means any commission, percentage fee, brokerage fee, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or University subcontract.

"Improper influence," as used in this clause means any influence that induces or tends to induce a University or Government employee or officer to give consideration or to act regarding a Government contract or University subcontract on any basis other than the merits of the matter.

- (c) **Lower-tier subcontracts.** Unless otherwise authorized by the University in writing, the Subcontractor shall cause provisions similar to the foregoing to be inserted in all lower-tier subcontracts entered into under this subcontract.

A10, Disputes

(a) *Definitions.* For purposes of this clause:

(1) "Board" means the Energy Board of Contract Appeals that has been established by the Secretary of Energy pursuant to Section g(a)(1) of the Contract Disputes Act of 1978, 41 U.S.C. § 607(a)(1).

(2) "Arbitration decision" means a decision of the Board in an arbitration pursuant to this clause.

(3) "Claim" means a written demand or written assertion by either contracting party seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of a contract term, or other relief arising under or relating to this subcontract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The Subcontractor may convert such submission into a claim if it is disputed either as to liability or amount, or is not acted upon in a reasonable time, by demanding a decision by the Procurement Manager.

(4) "Counterclaim" means a claim asserted in a pleading filed with the Energy Board of Contract Appeals in an arbitration proceeding pursuant to this clause which claim arises from the same occurrence or transaction relating to this subcontract that is the subject matter of the opposing party's claim. Counterclaims do not need to be submitted to the Procurement Manager for decision.

(5) "Procurement Manager" means a person designated by the University to decide claims of the Subcontractor or of the University against the Subcontractor.

(6) "Rules of the Board" means the Board's rules promulgated at 10 C.F.R. Part 1023, Subpart A.

(b) *Nature of This Subcontract.* This subcontract is not a Government contract and therefore is not subject to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The parties agree that the DOE is not a party to this subcontract and is not directly liable to the Subcontractor for claims and disputes within the purview of this clause. Further, the parties agree that, for the purposes of this subcontract, the University is not an agent of the DOE, and that neither the presence of this clause in the subcontract nor provision for arbitration by the Board shall create or imply the existence of privity of contract between the Subcontractor and the DOE.

(c) *Scope of Clause.* The parties agree that the rights and procedures set forth in this clause are the exclusive rights and procedures for the resolution of all claims and disputes arising under, or relating to, this subcontract. The parties shall be bound by an arbitration decision, which shall be enforceable as provided in the Federal Arbitration Act (9 U.S.C. . § 1 et seq.) and the terms of this clause.

(d) Submission of Claims by Subcontractor; Procurement Manager's Decision.

(1) Unless otherwise provided in this subcontract, the Subcontractor must file any claim against the University within 30 calendar days after the Subcontractor knew or should have known the facts giving rise to the claim.

(2) The Subcontractor must submit any claim in writing first to the University's procurement specialist, who shall attempt to resolve the matter within a reasonable amount of time. If the University's procurement specialist does not resolve the claim in a manner satisfactory to the Subcontractor, and the Subcontractor desires to pursue further action, the Subcontractor must submit the claim in writing to the Procurement Manager.

(3) Within sixty days of receipt of the claim, the Procurement Manager must issue a decision or notify the Subcontractor of the time within which a decision will be issued, which shall be reasonable, taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the Subcontractor in support of the claim. If the Procurement Manager fails to issue a decision on a subcontract claim within the specified period, the Subcontractor may make a demand for arbitration with the Board as if the claim had been denied.

(4) The University's procurement specialist may also submit a claim against the Subcontractor in writing to the Procurement Manager, who shall issue a written decision.

(5) The decision of the Procurement Manager shall be final and conclusive unless the complaining party demands arbitration by the Board in accordance with the terms of this clause.

(e) Demand for Arbitration

If the decision of the Procurement Manager is not satisfactory to a complaining party, and the complaining party desires to pursue further action, the complaining party must, within 45 days after receipt of the Procurement Manager's decision, submit to the Board a written demand for arbitration of the claim. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board.

(f) Right to a Hearing: Costs. In any arbitration pursuant to this clause, both parties shall be afforded an opportunity to be heard and to present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.

(g) Arbitration Decisions Judicial Review. An arbitration decision shall be final and conclusive unless a party, within one hundred and twenty days after the date of receipt of a copy of the decision, files an action to vacate, modify, or correct the decision pursuant to the Federal Arbitration Act.

(h) Subcontractor Performance Pending Claim Resolution. The Subcontractor shall proceed diligently with performance of this subcontract and shall comply with any decision of the University's procurement specialist or Procurement Manager, pending final resolution of any claim or dispute arising under, or relating to, this subcontract,.

(i) No Other Court Action. No action based upon any claim or dispute arising under, or relating to, this subcontract shall be brought in any court except as provided in this clause.

(i) Choice of Law. This subcontract shall be governed by Federal law as provided in this subparagraph. Irrespective of the place of award, execution or performance, this subcontract shall be construed and interpreted, and its validity determined, according to the Federal common law of government contracts as enunciated and applied to prime government contracts by the Board and Federal courts having appellate jurisdiction over the decisions of the Board rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act and other Federal statutes (including the Contract Disputes Act of 1978), Federal rules (including the Federal Acquisition Regulation, the Department of Energy Acquisition Regulation, and the rules promulgated by the Board) shall apply in accordance with their respective provisions.

(k) Interest. Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

A11, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Incorporated by Reference) (FAR 52.222-37)

(This clause applies if the subcontract exceeds \$10,000.)

A12, Equal Opportunity (Incorporated by Reference) (FAR 52.222-26)

A13, Foreign Travel

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the DOE Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Requests for approval shall be submitted at least 50 days prior to the planned departure date, be on a

Request for Approval of Foreign Travel form, and when applicable, include a modification for proposed Soviet-bloc travel.

- (c) Failure to obtain prior approval for foreign travel shall be cause for all costs relating to an unapproved trip being unallowable under this subcontract.
- (d) If personal time is taken in a foreign location under an approved trip, and such personal time exceeds the business time during the trip, all costs for such trip will be unallowable under this subcontract.
- (e) Reimbursement of travel costs shall be subject to limitations established by the United States Department of State for the period during which a trip is made.

A14, Hazardous Material Identification and Material Safety Data

- (a) The Subcontractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313B, for all hazardous material, whether or not listed in Appendix A to that Standard. This obligation applies to all materials delivered under the subcontract which will involve exposure to hazardous materials or items containing these materials.
- (b) **Definition.** "*Hazardous material*," as used in this clause, is defined in Federal Standard No 313B, in effect on the date of the subcontract.
- (c) Neither the requirements of this clause nor any act or failure to act by the University shall relieve the Subcontractor of any responsibility or liability for the safety of Government, University, Subcontractor, lower-tier subcontractor personnel or property.
- (d) Nothing contained in this clause shall relieve the Subcontractor from complying with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The University's rights in data furnished under the subcontract with respect to hazardous materials are as follows:
 - (1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the University for these purposes.
 - (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (e)(1) above, in precedence over any other clause of the subcontract providing for rights in data.
 - (3) That the University is not precluded from using similar or identical data acquired from other sources.
 - (4) That the data shall not be duplicated, disclosed, or released outside the University or the Government, in whole or in part, for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:

"These data are furnished under University of California, Los Alamos National Laboratory Subcontract No. _____ and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of (*the Subcontractor*). This legend shall be marked on any reproduction of this data."

(End of legend)

- (5) That the Subcontractor shall not place the legend or any other restrictive legend on any data that (i) the Subcontractor or any lower-tier subcontractor previously delivered to the University without limitations or (ii) should be delivered without limitation under the conditions specified in the Federal Acquisition Regulation in the clause at 52.227-14, Rights in Data - General.

- (f) The Subcontractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in lower-tier subcontracts (including purchase designations or purchase orders) under the subcontract involving hazardous materials.

A15, Limitation on Payments to Influence Certain Federal Transactions

(This clause applies if the subcontracts exceeds \$100,000.)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (c) A special Government employee, as defined in section 202, title 18, United States Code.
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical

services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Subcontractor and all lower-tier subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Subcontractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

- (2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95.507, and subsequent amendments.
- (E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

- (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of
- (1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communication with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.
- (E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) **Disclosure.**

- (A) The Subcontractor who requests or receives from an agency a University subcontract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes
- (B) The Subcontractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes-
 - (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individuals(s) influencing or attempting to influence a covered Federal action; or
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (C) The Subcontractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any lower-tier subcontract exceeding \$100,000 under the subcontract.
- (D) All lower-tier subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Subcontractor. The prime Subcontractor shall submit all disclosures to the Contract Administrator at the end of the calendar quarter in which the disclosure form is submitted by the lower-tier subcontractor. Each lower-tier subcontractor certification shall be retained in the subcontract file of the awarding Subcontractor

(iv) **Agreement.** The Subcontractor agrees not to make any payment prohibited by this clause.

(v) **Penalties.**

- (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
- (B) Subcontractors may rely without liability on the representation made by their lower-tier subcontractors in the certification and disclosure form.

(vi) **Cost allowability.** Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

A16, Notice and Assistance Regarding Patent and Copyright Infringement

(This clause applies if the subcontract exceeds \$100,000.)

- (a) The Subcontractor shall report to the Government, through the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement, based upon the performance of the subcontract, of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the University or the Government on account of any alleged

patent or copyright infringement arising out of the performance of the subcontract or out of the use of any goods furnished or work or services performed under the subcontract, the Subcontractor shall furnish to the University, when requested by the University, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.

- (c) The Subcontractor agrees to include, and require inclusion of, this clause in all lower-tier subcontracts at any tier for goods or services (including construction and architect-engineer subcontracts and those for goods, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at FAR 2.101.

A17, Notice of Labor Disputes

- (a) If the Subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the subcontract, the Subcontractor shall immediately give notice, including all relevant information, to the University.
- (b) The Subcontractor agrees to insert the substance of this clause, including this paragraph (b), in any lower-tier subcontract to which a labor dispute may delay the timely performance of the subcontract; except that each subcontract shall provide that if its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the Subcontractor, as the case may be, of all relevant information concerning the dispute.

A18, Officials Not to Benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of the subcontract, or to any benefit arising from it. However, this clause does not apply to the subcontract to the extent that the subcontract is made with a corporation for the corporation's general benefit.

A19, Preference for Privately Owned U.S.- Flag Commercial Vessels

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are -

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under the subcontract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

- (c) (1) The Subcontractor shall submit through the University, one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer, and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590.
- (2) The Subcontractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) Except for subcontracts at or below the simplified acquisition threshold, the Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts or purchase orders under this subcontract.
- (e) The requirement in paragraph (a) does not apply to —
- (1) Subcontracts at or below the simplified acquisition threshold;
 - (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available under Foreign Assistance Act of 1961 (22 U.S.C. 2353; and
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, Phone: 202-366-4610.

A20, Preference for U.S. - Flag Air Carriers

- (a) **Definitions.** *"International air transportation,"* as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- "United States,"* as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.
- "U.S.-flag air carrier,"* as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly American Act) requires that all Federal agencies and Government contractors and University subcontractors use U.S.- flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) The Subcontractor agrees, in performing work under this subcontract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

- (d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of Unavailability of U.S.-Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the FAR). States reasons:...

(End of Certification).

A21, Printing

- (a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "*Printing*" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Subcontractor shall include a provision substantially the same as this clause.

A22, Priorities and Allocations

- (a) The Subcontractor shall follow the provisions of the Defense Priorities and Allocation System (DPAS) Regulation (15 CFR 350) in obtaining controlled materials and other products and materials needed for performance of the subcontract.
- (b) A program or project under this subcontract may be eligible for priorities and allocations support as provided for by Section 101(c) of the Defense Priorities Act of 1950, as amended by the Energy Policy and Conservation Act (Public Law 94-163, 42 U.S.C. 6201 et seq.) if it is determined that its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Department of Energy and Commerce.

A23, Reporting of Royalties

If any royalty payments are reflected in the subcontract cost to the University, the Subcontractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the University) during the performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the University at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. The provisions of this clause, appropriately modified as to parties, shall be included in all lower-tier subcontracts that exceed \$25,000 unless other wise approved by the University.

A24, Required Sources for Jewel Bearings and Related Items

- (a) This clause applies only if the supplies to be furnished under the subcontract contain jewel bearings or related items; the supplies are to be used in the United States, its possessions and Puerto Rico; and the total price of the subcontract exceeds the small purchase dollar limitation set forth in Part 13 of the FAR.
- (b) **Definitions.** "*Jewel bearing*," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes - olive, watch hole - straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"*Plant*," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"*Price List*," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"*Related Item*," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

- (c) All jewel bearings and related items required for the supplies to be furnished under the subcontract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.
- (1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual subcontract, the prime contract number shall be placed on it.
- (2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.
- (3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.
- (d) At its option, the Plant may decline or reject all or part of a Subcontractor's or subcontractor's order. If the order is declined or rejected, the Subcontractor shall notify the contract administration office cognizant of the contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Subcontractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the subcontract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.
- (e) The Subcontractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every lower-tier subcontract unless the Subcontractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

A25, Security

- (a) **Responsibility.** It is the Subcontractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Subcontractor shall, in accordance with DOE security regulations and requirements, be

responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Subcontractor's possession in connection with the performance of work under this subcontract. Except as otherwise expressly provided in this subcontract, the Subcontractor shall, upon completion or termination of this subcontract, transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this subcontract. If retention by the Subcontractor of any classified matter is required after the completion or termination of the subcontract and such retention is approved by the University, the Subcontractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the subcontract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the subcontract.

- (b) *Regulations.* The Subcontractor agrees to conform to all security regulations and requirements of DOE.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "*Restricted Data*" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "*Formerly Restricted Data*" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "*National Security Information*" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been detained to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The Subcontractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Subcontractor or any person under the Subcontractor's control in connection with work under the subcontract, may subject the Subcontractor, its agents, employees, or lower-tier subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (j) *Lower-tier Subcontracts and purchase orders.* Except as otherwise authorized in writing by the University, the contractor shall insert provisions similar to the foregoing in all lower-tier subcontracts and purchase orders under the subcontract.

A26, Operations Security Program

The Subcontractor agrees to implement and sustain a DOE Operations Security (OPSEC) Program in accordance with the provisions of the Laboratory's OPSEC Guidance for LANL Contractors Manual when awarded subcontracts involving access to and protection of classified or sensitive information, nuclear materials or other safeguards and security interests.

A27, Security Procedures

(a) Badging

All employees of the Subcontractor, employees of lower-tier subcontractors, and/or consultants to the Subcontractor or lower-tier subcontractors (hereinafter called Subcontract Personnel) performing work on-site at Los Alamos National Laboratory for ten or more consecutive work days must obtain a badge issued by the Laboratory Badge Office (FSS-15). Badges will Uncleared, L Cleared, or Q Cleared as appropriate for an individual's level of security clearance and the access needed to perform the requirements of the subcontract. If access is required for performance of the subcontract, approval of Foreign Ownership, Control, or Influence for the subcontract must have been received by the Laboratory prior to cleared badges being issued. The Subcontractor shall make requests for badges to be issued to the University Technical Representative for submittal to FSS-15. Requests for issuance of Cleared badges must include the information listed in paragraph (c) below.

(b) Security Access

Access to security areas of the Laboratory or to classified information will require individuals to possess an L or Q Clearance and to have been issued a badge by the Laboratory Badge Office.

(c) Clearances

Requests for initiation or transfer of L or Q Clearances under the subcontract shall be made to the University Technical Representative for submittal to FSS-15 through the University Contract Administrator. Information listed below must be included in each request.

- Full name
- Date of Birth
- Social Security Number
- Job Title
- Employer's name and address
- Personnel officer or point of contact and telephone number for individual's employer.

Each of the following questions must be answered:

- What service will the individual perform that necessitates possession of a clearance?
- Does the individual require access to classified information/materials?
- With whom will the individual interact within security areas?
- Why the service cannot be performed outside of security areas or under escort.

Requests for transfer of a security clearance must include the following information:

- Name of installation where the clearance was or is currently active.
- DOE File Number (if available).
- Date clearance was granted.

(d) Escorted Entry to Security Areas

Escorts for entry of uncleared personnel to security areas may be obtained from the Laboratory's contract labor subcontractor for secretarial and administrative support, whose name may be obtained from the University Contract Administrator. Payment for escort services obtained through this procedure shall be the responsibility of the Subcontractor.

(e) Responsibilities of the Subcontractor

All badges issued by the Laboratory Badge Office to Subcontract Personnel are the property of the U.S. Government. The Subcontractor is responsible and accountable for all badges issued to Subcontract Personnel for performance of the subcontract.

If a badge is lost or stolen, the Subcontractor shall immediately notify the Laboratory Badge Office orally with a follow-up written notification.

The Subcontractor shall conduct or have conducted by its lower-tier subcontractors, for each individual who has been issued a cleared badge, a Security Termination Briefing and shall obtain a Security Termination Statement, DOE Form 5631.29:

1. Upon termination of employment ,
2. When a clearance is no longer required to perform subcontract requirements, or
3. Upon completion of work called for under the subcontract.

The Subcontractor shall retrieve all badges, cleared and uncleared, including expired badges, issued for performance of the subcontract and return them to: Los Alamos National Laboratory, Personnel and Information Security Group, FSS-15, P.O. Box 1663, Mail Stop B236, Los Alamos, NM 87545 within 10 working days from:

1. The date of termination of employment of an individual classified as Subcontractor Personnel,
2. The date upon which it is determined that a clearance is no longer required for performance of subcontract requirements,
3. The date of removal/transfer of an individual from performing work under the subcontract, or
4. The date of completion or termination of work under the subcontract.

(f) Withholding of Payment

Final payment under the subcontract shall not be made by the University until all badges issued under the auspices of the subcontract have been either returned to FSS-15 or have been accounted for by the Subcontractor to the satisfaction of FSS-15.

**General Provisions
for Subcontracts
Section B**

February 1999

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Form 7500, Section B

Section B Clauses Apply to All Types of Subcontracts.

The clauses listed below are appropriate to all types of subcontracts regardless of pricing arrangement. Clauses in this section are incorporated into subcontracts by specifically citing clause numbers in the Schedule.

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B1, Accounts, Records, and Inspection

- (a) **Accounts.** The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, or anticipated to be incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles and consistently applied.
- (b) **Inspection and Audit of Accounts and Records.** All books of account and records relating to this subcontract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the subcontractor shall afford DOE and/or the University proper facilities for such inspection and audit.
- (c) **Audit of Lower-tier Subcontractor's Records.** The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor at any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the DOE contracting officer.
- (d) **Disposition of Records.** Except as agreed upon by the University and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be delivered to the University or otherwise disposed of by the Subcontractor either as the University from time to time direct during the progress of work or, in any event, as the University shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by the University and the Subcontractor.
- (e) **Reports.** The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports covering the work under this subcontract as the University may from time to time require.
- (f) **Inspections.** The DOE and the University shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time in such manner as it shall deem appropriate.
- (g) **Lower-tier Subcontracts.** The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor. The Subcontractor further agrees to include an audit clause, the substance of which is Clause B5, Price Reduction for Defective Cost or Pricing Data.

B2, Additional Paragraph (h) to Clause B1.

For all cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and (b) any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by the University and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.

- (h) **Internal Audits.** The Subcontractor agrees to conduct an internal audit and examination satisfactory to DOE and the University of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the DOE Contracting Officer and/or the University.

B3, Administration of Cost Accounting Standards

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this subcontract, the Subcontractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

- (a) Submit to the Government Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other subcontractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
- (1) For any change in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by subparagraph (a)(4) at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

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- (i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or
 - (ii) In the event of Subcontractor disagreement with the initial finding of noncompliance, within 60 days of the date the Subcontractor is notified by the Government Contracting Officer of the determination of noncompliance.
- (b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Government Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.
 - (1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.
 - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards-Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or by subparagraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Government Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Subcontractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Government Contracting Officer.

- (d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with subparagraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.
- (e) For all lower-tier subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5-
- (1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used, and
 - (2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant Government contract administration office for transmittal to the Government contract administrative office cognizant of the subcontractor's facility:
 - (i) Subcontractor's name and subcontract number.
 - (ii) Dollar amount and date of award.
 - (iii) Name of Contractor making the award.
 - (iv) Any changes the lower-tier subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported. If award of the lower-tier subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (f) Notify the University contract administrator in writing of any adjustments required to lower-tier subcontracts under this subcontract and agree to an adjustment, based on them, to this subcontract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the lower-tier subcontract or this subcontract appropriately.
- (g) For lower-tier subcontracts containing the clauses at FAR 52.230-2 or 52.230-5, require the lower-tier subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

B4, Cost Accounting Standards

- (a) Unless the subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Subcontractor, in connection with this subcontract, shall—
- (1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting, practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the Government

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Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government or the University.

- (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
 - (i) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
 - (ii) Negotiate with the Government Contracting Officer or the University to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the University or the United States.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States or the University. Such adjustment shall provide for recovery of the increased costs to the United States or the University, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States or the University was made to the time the adjustment is effected. In no case shall the Government or the University recover costs greater than the increased cost to the Government or the University, in the aggregate, on the relevant subcontracts subject to the price

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adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the University or the Government.

- (b) If the parties fail to agree whether the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States or the University, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Subcontractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the lower-tier subcontractor's award date or if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$500,000 where the price negotiated is not based on-
 - (1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

B5, Cost Accounting Standards - Educational Institution

- (a) Unless the subcontract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Subcontractor, in connection with this subcontract, shall-
 - (1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this subcontract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Subcontractor and which contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the Government Contracting Officer or the University that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government or the University.

- (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this subcontract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Subcontractor's cost accounting practices be made after the date of this subcontract award, the change must be applied prospectively to this subcontract and the Disclosure Statement, if required, must be amended accordingly. If the subcontract price or cost allowance of this subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.
- (3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.
- (4)
- (i) Agree to an equitable adjustment as provided in the Changes clause of this subcontract if the subcontract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.
 - (ii) Negotiate with the Government Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States or the University.
 - (iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this subcontract.
 - (iv) Agree to an equitable adjustment as provided in the Changes clause of this subcontract, if the subcontract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of subcontract award, requires the Subcontractor to make a change to the Subcontractor's established cost accounting practices.
- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United

States or the University. Such adjustment shall provide for recovery of the increased costs to the United States or the University, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States or the University was made to the time the adjustment is effected. In no case shall the Government or the University recover costs greater than the increased cost to the Government or the University, in the aggregate, on the relevant subcontracts subject to the price adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government or the University.

- (b) If the parties fail to agree whether the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Subcontractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other lower-tier subcontracts, of any-tier, including the obligation to comply with all applicable CAS in effect on the lower-tier subcontractor's award date or, if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data, except that
 - (1) If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted; and
 - (2) This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$500,000 where the price negotiated is not based on—
 - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

B6, Disclosure and Consistency of Cost Accounting Practices

- (a) The Subcontractor, in connection with this subcontract, shall—
 - (1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost

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Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

- (2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Subcontractor has notified the Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government or the University.
- (3)
 - (i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Subcontractor, and the Subcontractor agrees to negotiate with the Government Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
 - (ii) The Subcontractor shall, when the parties agree to a change to a cost accounting practice and the Government Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this subcontract. In the absence of the required finding, no agreement may be made under this subcontract clause that will increase costs paid by the United States or the University
- (4) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States or the University. Such adjustment shall provide for recovery of the increased costs to the United States or the University together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States or the University was made to the time the adjustment is effected.
- (b) If the parties fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States or the University, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).
- (c) The Subcontractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts, which the Subcontractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other lower-tier subcontracts of any tier, except that

- (1) If the lower-tier subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230-2, shall be inserted in lieu of this clause; or
- (2) This requirement shall apply only to negotiated lower-tier subcontracts in excess of \$500,000 where the price negotiated is not based on-
 - (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (ii) Price set by law or regulation; or
- (3) The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

B7, Facilities Capital Cost of Money

Facilities capital cost of money will be an allowable cost under the contemplated subcontract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the FAR are met and facilities capital cost of money was included in the offer resulting in the subcontract.

B8, Waiver of Facilities Capital Cost of Money

The Subcontractor did not include facilities capital cost of money as a proposed cost of this subcontract. Therefore, it is an unallowable cost under this subcontract.

B9, Price Reduction for Defective Cost or Pricing Data

- (a) If any price, including profit or fee, negotiated in connection with the subcontract or any cost reimbursable under the subcontract was increased by any significant amount because
 - (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.
- (b) Any reduction in the subcontract price under paragraph (a) above due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.

- (c) (1) If the University determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The Subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the University.
 - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
 - (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the University based upon the facts shall be allowed against the amount of a contract price reduction if
- (A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if
- (A) The understated data was known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The University or the Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (d) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the University at the time such overpayment is repaid. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the University is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of The Treasury under 26 U.S.C. 6621(a)(2).

B10, Price Reduction for Defective Cost or Pricing Data - Modifications

- (a) This clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification for which the price is
- (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) If any price, including profit or fee, negotiated in connection with any modification under this clause or any cost reimbursable under the subcontract was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.
- (c) Any reduction in the subcontract price under paragraph (b) above because of defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the University determines under paragraph (b) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took now affirmative action to bring the character of the data to the attention of the Contracting Officer.

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- (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
- (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the University based upon the facts shall be allowed against the amount of a contract price reduction if
 - (A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and
 - (B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if --
 - (A) The understated data was known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The University or the Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.
- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the University at the time such overpayment is repaid. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of The Treasury under 26 U.S.C. 6621(a)(2).

B11, Subcontractor Cost or Pricing Data

- (a) The following clause shall be inserted in all subcontracts where such subcontracts exceed the cost or pricing data threshold at FAR 15.804-(2)(a)(1), even though the original amount of the subcontract was below the threshold.

CERTIFIED COST OR PRICING DATA (December 1994)

- (a) (1) The Subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each lower-tier subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

Form 7500

(2) Except as provided in (a)(3) of this clause, certified cost or pricing data shall be submitted prior to (i) (I) the award of each lower-tier subcontract, the price of which is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), and (ii) the negotiation of the price of each change or modification to the lower-tier subcontract under this subcontract for which the price adjustment is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1).

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Subcontractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the lower-tier subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by lower-tier subcontractors to the Subcontractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below.

Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the University in support of ____* are accurate, complete, and current as of ____**.

Firm Name Title
Date of Execution***

* Identify the proposal, quotation, request for price adjustment, or other submission involved.

** Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the subcontract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds the cost or pricing data threshold at FAR 15.804-2(a)(1) or the price of any change or other modification do this subcontract is expected to exceed the cost or pricing data threshold at FAR 15.804-2(a)(1), the Subcontractor agrees to furnish the University certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

- (e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any lower-tier subcontractor change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a lower-tier subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.
- (f) The Subcontractor agrees to insert paragraph (c) without change and the substance of paragraph (a), (b), (c), (d), (e), and (f) of this clause in each lower-tier subcontract of hereunder in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1) and in each lower-tier subcontract of the cost or pricing data threshold at FAR 15.804-2(a)(1) a change or other modification thereto in excess of the cost or pricing data threshold at FAR 15.804-2(a)(1).
- (g) If the University determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the Subcontractor, or any lower-tier subcontractor pursuant to this clause or any lower-tier subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data, then such prices or cost shall be reduced accordingly and the subcontract shall be modified in writing to reflect such reduction.
- (h) Failure of the Subcontractor and the lower-tier subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

B12, Subcontractor Cost or Pricing Data

- (a) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is
 - (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) The Subcontractor shall require the lower tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (c) In each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, the Subcontractor shall insert either
 - (1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the lower-tier subcontract; or

- (2) The substance of the clause entitled Subcontractor Cost or Pricing Data -Modifications.

B13, Subcontractor Cost or Pricing Data - Modifications

- (a) The requirements of paragraphs (b) and (c) of this clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), and shall be limited to such modifications.
- (b) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is
- (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (c) The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into.

B14, Audit and Records- Negotiation

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the University, or an authorized representative of the University or the Department of Energy Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the subcontract.

(c) *Cost or pricing data.* If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the University, or an authorized representative of the Department of Energy Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to--

- (1) The proposal for the subcontract, lower-tier subcontract or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the subcontract, lower-tier subcontract, or modification; or
- (4) Performance of the subcontract, lower-tier subcontract or modification.

(d) *Comptroller General--*

- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
- (2) This paragraph may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Subcontractor is required to furnish cost, funding, or performance reports, the University or an authorized representative of the Department of Energy Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition--

- (1) If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

(g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold in FAR Part 13, and--

- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
- (2) For which cost or pricing data are required; or
- (3) That require the lower-tier subcontractor to furnish reports as discussed in paragraph (c) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

B15, Additional Paragraph (h) to Clause B14

(For cost-reimbursement subcontracts with educational and other non-profit institutions)

- (h) The provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this subcontract.

B16, Audit-Commercial Items

- (a) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or any other form.
- (b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the University and authorized representatives of the DOE Contracting Officer have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.
- (c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804-1(a)(2).

B17, State of New Mexico Gross Receipts and Compensating Tax

This clause applies if (1) the subcontract directs or authorizes the Subcontractor to acquire tangible personal property as a direct cost under the subcontract and title to such property passes directly to and vests in the United States upon delivery of the property by the Subcontractors, and (2) the subcontract is for services to be performed in whole or in part within New Mexico.

- (a) Within thirty days after award of the subcontract, the Subcontractor shall advise the State of New Mexico of the subcontract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico, and shall identify the subcontract number.
- (b) The Subcontractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the subcontract fee and costs paid for performance of the subcontract, or of any part of portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Subcontractor or its lower-tier subcontractors will be determined in accordance with the Allowable Cost and Payment clause of the subcontract except as provided in paragraph (d) of this clause.
- (c) The Subcontractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico, 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Subcontractor shall use these certificates strictly in accordance with the subcontract and the agreement between DOE and the New Mexico Taxation and Revenue Department.
- (d) The Subcontractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Subcontractor for use in the performance of the subcontract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipts taxes and those taxes, which are then passed on to the Subcontractor, shall not be reimbursable as an allowable cost by the University.
- (e) The Subcontractor shall pay the New Mexico compensating user tax for any tangible personal property that is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Subcontractor that would be otherwise subject to compensating tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Subcontractor only if such property is not used for Federal purposes.
- (g) The University may receive information regarding the Subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the University, may participate in any matters or proceedings pertaining to this clause or the above mentioned Agreement. This shall not preclude the Subcontractor from having its own representative nor does it obligate the University to represent its Subcontractor.
- (h) The Subcontractor agrees to insert the substance of this clause, including this paragraph (h), in each lower-tier subcontract that meets the criteria in FAR 29.401-6 (b)(1) through (3).

- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred before the date of termination.

B18, Rights in Data - General

(a) **Definitions.**

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software, it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) (General Provision B19) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications or such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) (General Provision B20) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made a part of the subcontract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, meant the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

- (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in -
 - (i) Data first produced in the performance of the subcontract;
 - (ii) Form, fit, and function data delivered under the subcontract;
 - (iii) Data delivered under this subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under the subcontract; and
 - (iv) All other data delivered under the subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.
- (2) The Subcontractor shall have the right to -
 - (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract unless provided otherwise in paragraph (d) of this clause;
 - (ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;
 - (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
 - (iv) Establish claim to copyright subsisting in data first produced in the performance of the subcontract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.*

- (1) *Data first produced in the performance of the subcontract.* Unless provided otherwise in paragraph (d) of this clause, the Subcontractor may establish, without prior approval of the University, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of the subcontract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the DOE Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of the subcontract. (Requests for DOE Contracting Officer's permission are to be submitted through the University Contract Administrator.) When claim to copyright is made, the Subcontractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number) to the data when such data are

delivered to the University, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, or perform publicly or display publicly by or on behalf of the Government.

- (2) *Data not first produced in the performance of the subcontract.* The Subcontractor shall not, without prior written permission of the DOE Contracting Officer, incorporate in data delivered under the subcontract any data not first produced in the performance of the subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided*, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in the subcontract or as otherwise may be provided in a collateral agreement incorporated in or made part of the subcontract.
- (3) *Removal of copyright notices.* The University and the Government agree not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.*

- (1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of the subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in the subcontract.
- (2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of the subcontract which contains restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the University after conferring with the DOE Contracting Officer.
- (3) The Subcontractor agrees not to establish claim to copyright in computer software first produced in the performance of the subcontract without prior written permission of the DOE Contracting Officer. (Requests for DOE Contracting Officer's permission are to be submitted through the University Contract Administrator.) When such permission is granted, the DOE Contracting Officer, through the University shall specify appropriate terms to assure dissemination of the software. The Subcontractor shall promptly deliver to the University or to the Patent Counsel designated by the DOE Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is

entitled, and other terms pertaining to the computer software to which claim to copyright is made.

(e) Unauthorized marking of data.

- (1) Notwithstanding any other provisions of the subcontract concerning inspection or acceptance, if any data delivered under the subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause, or if such data bears any other restrictive or limiting markings not authorized by the subcontract, the University may at any time either return the data to the Subcontractor, or with the concurrence of the DOE Contracting Officer, cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.
 - (i) The University shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (ii) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the University for good cause shown), the University shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (iii) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the University shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the University determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the University determines, with the concurrence of the DOE Contracting Officer, that the markings are not authorized, the University shall furnish the Subcontractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the University's decision. The University shall continue to abide by the markings under this subdivision (e)(1)(ii) until final resolution of the matter either by the University's determination becoming final (in which instance the University shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedure set forth in subparagraph (e)(1) of this clause may be modified in accordance with DOE regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
- (3) This paragraph (e) does not apply if this subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

- (4) Except to the extent the University's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Subcontractor is not precluded by this paragraph (e) from bringing a claim under the Disputes clause of the subcontract that may arise as the result of the University removing or ignoring authorized markings on data delivered under the subcontract.

(f) *Omitted or incorrect markings.*

- (1) Data delivered to the University without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the University and the Government assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the University or the Government, the Subcontractor may request, within 6 months (or a longer time approved by the University for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Subcontractor's expense, and the University may agree to do so if the Subcontractor-
- (i) Identifies the data to which the omitted notice is to be applied;
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the University and the Government have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice resulting from the omission of the notice.
- (2) The University may also (i) permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

- (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under the subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to the University under the subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the University are to be treated as limited rights data and not restricted computer software.

- (h) *Subcontracting.* The Subcontractor has the responsibility to obtain from its lower-tier subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the University under the subcontract. If a lower-tier subcontractor refuses to accept terms affording the University and the Government such rights, the Subcontractor shall promptly bring such refusal to the attention of the University and not proceed with lower-tier subcontract award without further authorization.

- (i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the University or Government under any patent or be construed as affecting the scope of any license of other right otherwise granted to the University or the Government.
- (j) The Subcontractor agrees, except as may be otherwise specified in the subcontract for specific data items listed as not subject to this paragraph, that the University and the Government may, up to three years after acceptance of all items to be delivered under the subcontract, inspect at the Subcontractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the DOE Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the DOE Contracting Officer shall designate an alternate inspector.

B19, Additional Paragraph (g)(2) to Clause B14, Rights in Data-General

- (2) Notwithstanding subparagraph (g)(1) of this clause, the subcontract may identify and specify the delivery of limited rights data, or the University may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the University will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Subcontract No. _____ (and lower-tier subcontract, if appropriate). These data may be reproduced and used by the University and the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the University or the Government; except that the University or the Government may disclose these data outside the University or the Government for the following purposes, if any; provided that the University and the Government makes such disclosure subject to prohibition against further use and disclosure:*

(b) This Notice shall be marked on any reproduction of these data in whole or in part.

(End of Notice)

*The purposes shall be identified in the subcontract schedule when this clause is used.

B20, Additional Paragraph (g)(3) to Clause B14, Rights in Data - General

- (3) (i) Notwithstanding subparagraph (g)(1) of this clause, the subcontract may identify and specify the delivery of restricted computer software, or the University may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software, the University will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Subcontract No. _____ (and lower-tier subcontract _____ if appropriate). It may not be used, reproduced, or disclosed by the University or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the subcontract.

(b) This computer software may be - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred; (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative; (3) Reproduced for safekeeping (archives) or backup purposes; (4) Modified, adapted, or combined with other computer software, *provided* that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights; (5) Disclosed to and reproduced for use by support service Contractors or Subcontractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the University or the Government makes such disclosure or reproduction subject to these restricted rights; and (6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copy-righted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated or incorporated in, the subcontract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

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- (ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Subcontract No. _____ (and lower-tier subcontract _____, if appropriate) with _____ (name of Subcontractor and lower-tier subcontractor).

(End of Notice)

- (iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the University and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Subcontractor includes the following statement with such copyright notice:

"Unpublished - rights reserved under the Copyright Laws of the United States."

B21, Alternate Paragraph (c)(1) to Clause B14, Rights In Data - General

This paragraph may only be used in subcontracts for basic or applied research to be performed solely by universities and colleges.

- (1) *Data first produced in the performance of the subcontract.* Except as otherwise specifically provided in the subcontract, the Subcontractor may establish claim to copyright subsisting in any data first produced in the performance of this subcontract. When claim to copyright is made, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including subcontract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Subcontractor grants to the Government and others working on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Subcontractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

B22, Additional Data Requirements

(This clause does not apply if the subcontract is for the conduct of basic or applied research as set out elsewhere in the subcontract to be performed solely by a college or university and the estimated cost is not in excess of \$500,000.)

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- (a) In addition to the data as defined in the Rights in Data - General clause or other equivalent included in the subcontract and specified elsewhere in the subcontract to be delivered, the University may, at any time during subcontract performance or within a period of three years after acceptance of all items to be delivered under the subcontract, order any data first produced or specifically used in the performance of the subcontract.
- (b) The Rights in Data - General clause or other equivalent included in the subcontract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to deliver any data the withholding of which is authorized by the Rights in Data or other equivalent clause of the subcontract or data that are specifically identified in the subcontract as not subject to this clause.
- (c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form for reproduction and for delivery.
- (d) The University with the concurrence of the DOE Contracting Officer may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

B23, Rights in Data - Special Works

- (a) **Definition.** "*Data*," as used in this clause, means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) that are specified to be delivered under the subcontract. The term includes data such as management studies and data produced under support services subcontracts but does not include financial reports, cost analyses, and other information incidental to subcontract administration.
- (b) All data first produced or composed in the course of or under the subcontract shall be the sole property of the Government. Except with the prior written permission of the DOE Contracting Officer, the Subcontractor agrees not to assert any rights at common law or in equity or to establish any claim to statutory copyright in such data. The Subcontractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others so to do without the written consent of the DOE Contracting Officer or until such time as the University or the Government may have released such data to the public.
- (c) The Subcontractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive, and irrevocable license throughout the world
 - (1) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data that are not first produced or composed in the performance of the subcontract but that are incorporated in the work furnished under the subcontract; and
 - (2) To authorize others to do so.

- (d) The Subcontractor shall indemnify and save and hold harmless the University and the Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses
 - (1) For violation of proprietary rights, copyrights, or rights or privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under the subcontract; or
 - (2) Based upon libelous, defamatory, or other unlawful matter contained in such data.
- (e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

B24, Rights in Data - Existing Works

- (a) Except as otherwise provided in the subcontract, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all material or subject matter called for under the subcontract, or for which this clause is specifically made applicable.
- (b) The Subcontractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under the subcontract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Subcontractor as soon as practicable of any claim or suit, affords the Subcontractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Subcontractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Subcontractor by the Government or University and incorporated in data to which this clause applies.

B25, Rights in Proposal Data

Except for data contained on pages * , it is agreed that as a condition of award of the subcontract and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data - General" clause contained in the subcontract) in and to the technical data contained in the proposal dated * , upon which this subcontract is based.

*Identified in Section F of the Schedule.

B26, Technical Data Certification, Revision, and Withholding of Payment - Major Systems

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(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data - General clause included in the subcontract) that have been specified in the subcontract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during subcontract performance or within 3 years after acceptance of all items (other than technical data) delivered under the subcontract unless a different period is set forth therein. The University may release the Subcontractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.*

- (1) All technical data that are subject to this clause shall be accompanied by the following certification upon delivery:

TECHNICAL DATA CERTIFICATION

The Subcontractor, _____,
hereby certifies that to the best of its knowledge and belief the technical data delivered herewith under Government contract No. W-7405-ENG-36 and subcontract No. _____ are complete, accurate, and comply with the requirements of the subcontract concerning such technical data.

(End of certification)

- (2) The Government and University shall rely on the certification set out in subparagraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with subcontract requirements. Such corrections shall be made at the expense of the Subcontractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data - General clause included in the subcontract.

(c) *Technical data revision.* The Subcontractor also agrees, at the request of the University, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of the subcontract and affecting the form, fit, and function of any item (other than technical data) delivered under the subcontract. The Subcontractor may submit a request for an equitable adjustment to the terms and conditions of the subcontract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.*

- (1) At any time before final payment under the subcontract the University may, in the Government's and the University's interest, withhold payment until a reserve not exceeding \$100,000 or 5 percent of the amount of the subcontract, whichever is less, if in the University's opinion respecting any technical data that are subject to the clause, the Subcontractor fails to -
- (i) Make timely delivery of such technical data as required by the subcontract.
 - (ii) Provide the certification required by subparagraph (b)(1) of this clause;
 - (iii) Make the corrections required by subparagraph (b)(2) of this clause; or
 - (iv) Make revisions requested under paragraph (c) of this clause.

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- (2) Such reserve or balance shall be withheld until the University has determined that the Subcontractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Subcontractor and without the fault or negligence of the Subcontractor.
- (3) The University may decrease or increase the sums withheld up to the sums authorized in subparagraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government or University rights.

B27, Major System - Minimum Rights

Notwithstanding any other provision of this subcontract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this subcontract and relating to a major system or supplies for a major system procured or to be procured by the Government or the University, to the extent that delivery of such technical data is required as an element of performance under the subcontract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of the subcontract.

B28, Authorization and Consent

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the subcontract or any lower-tier subcontract.
- (b) The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all lower-tier subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

B29, Authorization and Consent

- (a) The Government authorizes and consents to all use and manufacture, informing the subcontract or any lower-tier subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the University under the subcontract or (2) used in machinery, tools, or methods whose use is necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with (i) specifications or written provisions forming a part of the subcontract or (ii) specific written instructions given by the University directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely

by the provisions of the indemnity clause, if any, included in the subcontract or any lower-tier subcontract thereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- (b) The Subcontractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all lower-tier subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any lower-tier subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

B30, Waiver of Indemnity

Any provision or clause of the subcontract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing the subcontract, of any invention covered by the United States patents identified in the schedule and waives indemnification by the Subcontractor regarding such patents.

B31, Patent Indemnity

- (a) The Subcontractor shall indemnify the University and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of goods, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under the subcontract, or out of the use or disposal by or for the account of the Government of such goods or construction work.
- (b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the University and/or the Government of the suit or action alleging such infringement and shall have been given such opportunity that is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to
 - (1) an infringement resulting from compliance with specific written instructions of the University directing a change in the goods to be delivered or in the material or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor;
 - (2) an infringement resulting from addition to or change in goods furnished or construction work performed that was made subsequent to delivery or performance; or
 - (3) a claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

- (c) This patent indemnification shall cover the items identified in Section F of the subcontract schedule.

B32, Classified Inventions

- (a) The Subcontractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under the subcontract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Department of Energy through the University.
- (b) When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under the subcontract, the subject matter of which is classified for reasons of security, the Subcontractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Subcontractor shall by separate letter identify by agency and number the contract(s) or subcontract(s) which require security classification markings to be placed on the application.
- (c) The substance of this clause shall be included in lower-tier subcontracts which cover or are likely to cover classified subject matter.

B33, Patent Rights - Retention by The Subcontractor (Short Form)

(a) **Definitions.**

- (1) "*Invention*" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (2) "*Made*" when used in relation to any invention means the conception of first actual reduction to practice of such invention.
- (3) "*Nonprofit organization*" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (c)) and exempt from taxation under section 501 (a) of the Internal Revenue Code (26 U.S.C. 501 (a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- (5) "*Practical application*" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (6) "*Small business firm*" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the

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Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

- (7) "*Subject invention*" means any invention of the subcontractor conceived or first actually reduced to practice in the performance of work under the subcontract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of subcontract performance.
- (8) "*Agency licensing regulations*" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Subcontractor.

- (1) The Subcontractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Subcontractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.
- (2) The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the

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Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- (4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Subcontractor will convey to the Federal agency, upon written request, title to any subject invention--

- (1) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified times.
- (2) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Subcontractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Subcontractor shall continue to retain title in that country.
- (3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Subcontractor and protection of the Subcontractor right to file.

- (1) The Subcontractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Subcontractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.
- (2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the

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Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Subcontractor action to protect the Government's interest.

- (1) The Subcontractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Subcontractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The Subcontractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the subcontract) issued by the University of California under Contract W-7405-ENG-36 awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Lower-tier Subcontracts.

- (1) The Subcontractor will include this clause, suitably modified to identify the parties, in all lower-tier subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The lower-tier subcontractor will retain all rights provided for the Subcontractor in this clause, and the Subcontractor will not, as part of the consideration for awarding the lower-tier subcontract, obtain rights in the lower-tier subcontractor's subject inventions.

- (2) The subcontractor shall include in all other lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration. or research work the patent rights clause at DEAR 952.227-13.
- (3) In the case of lower-tier subcontracts, at any tier, DOE, lower-tier subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the lower-tier subcontractor and DOE with respect to the matters covered by the clause: provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph(j) of this clause.
- (h) Reporting on utilization of subject inventions. The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Subcontractor.
- (i) Preference for United States industry. Notwithstanding any other provision of this clause, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-in rights. The Subcontractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Subcontractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that--
- (1) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special provisions for subcontracts with nonprofit organizations. If the Subcontractor is a nonprofit organization, it agrees that—
- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;
 - (2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and
 - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Subcontractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

- (1) The Subcontractor shall direct any notification disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the University.

- (2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.
- (3) Upon request of the DOE Patent Counsel or the University, the Subcontractor shall provide any or all of the following:
 - (i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the Subcontractor has applied for a patent;
 - (ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or
 - (iii) a report, prior to close-out of the subcontract, listing all subject inventions or stating that there were none.

B34, Patent Rights - Acquisition by The Government

(a) Definitions.

"Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention", as used in this clause, means any invention of the Subcontractor conceived or first actually reduced to practice in the course of or under the subcontract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 99.109-6 or successor regulations.

"Agency licensing regulations" and *"applicable agency licensing regulations"*, as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights.

- (1) Assignment to the Government. The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to

each subject invention, except to the extent that rights are retained by the Subcontractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

- (i) The Subcontractor, or an employee-inventor after consultation with the Subcontractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Subcontractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the University at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the University for good cause shown in writing by the Subcontractor. Each determination of greater rights under the subcontract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.
- (ii) Within two (2) months after the filing of a patent application, the Subcontractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Subcontractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.
- (iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
- (iv) Upon request, the Subcontractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

- (1) With respect to each subject invention to which the Department of Energy grants the Subcontractor principal or exclusive rights, the Subcontractor agrees as follows:
 - (i) The Subcontractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).
 - (ii) The Subcontractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations to require the Subcontractor, an assignee, or exclusive licensee of a subject invention

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to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that--

- (A) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
- (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
- (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Subcontractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as DOE may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Subcontractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Subcontractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Subcontractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument

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transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Subcontractor.

- (1) The Subcontractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Subcontractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.
- (2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
- (4) The Subcontractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the University. DOE approval, if given, will be based on a determination that this would best serve the national interest.

- (i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating:
 - (A) The commercial use that is being made, or is intended to be made, of said invention, and
 - (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.
- (ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.
- (iii) If noted elsewhere in this subcontract as a condition of the grant of an advance waiver of the Government's title to inventions under this subcontract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.
- (iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.
- (v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing:
 - (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market

concentration in any section of the United States in any line of commerce to which the technology relates; or

- (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

- (vi) If the Subcontractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof

- (vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Subcontractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

- (1) The Subcontractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Subcontractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under the subcontract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish the University a description of such procedures for evaluation and for determination as to their effectiveness.

- (2) The Subcontractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the University within 2 months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters or, if earlier, within 6 months after the Subcontractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the

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invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Subcontractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Subcontractor contends in writing at the time the invention is disclosed that it was not so made.

- (3) The Subcontractor shall furnish the University the following:
 - (i) Interim reports every 12 months (or such longer period as may be specified by the University) from the date of the subcontract, listing subject inventions during that period, and certifying that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by subparagraph (c)(1) of this clause have been followed.
 - (ii) A final report, within 3 months after completion of the subcontracted work listing all subject inventions or certifying that there were no such inventions, and listing all lower-tier subcontracts at any tier containing a patent rights clause or certifying that there were no such subcontracts.
 - (4) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.
 - (5) The Subcontractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.
- (f) Examination of records relating to inventions.
- (1) The University or DOE shall, until 3 years after final payment under the subcontract, have the right to examine any books, (including laboratory notebooks), records, and documents of the Subcontractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under the subcontract to determine whether--
 - (i) Any such inventions are subject inventions;
 - (ii) The Subcontractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

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- (iii) The Subcontractor and its inventors have complied with the procedures.
 - (2) If the University or DOE learns of an unreported Subcontractor invention which the University or DOE believes may be a subject invention, the Subcontractor may be required to disclose the invention to DOE for a determination of ownership rights.
 - (3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.
- (g) Withholding of payment (NOTE: This paragraph does not apply to lower-tier subcontracts).
- (1) Any time before final payment under the subcontract, the University may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the University's opinion, the Subcontractor fails to--
 - (i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.
 - (ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;
 - (iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;
 - (iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause; or
 - (v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.
 - (2) Such reserve or balance shall be withheld until the University has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
 - (3) Final payment under the subcontract shall not be made before the Subcontractor delivers to the University all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the University.
 - (4) The University may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any University or Government rights.

(h) Subcontracts.

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- (1) The Subcontractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances Determination by DOE. In all other lower-tier subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Subcontractor shall include this clause (suitably modified to identify the parties). The Subcontractor shall not, as part of the consideration for awarding the lower-tier subcontract, obtain rights in the lower-tier subcontractor's subject inventions.
- (2) In the event of a refusal by a prospective lower-tier subcontractor to accept such a clause the Subcontractor--
 - (i) Shall promptly submit a written notice to the University setting forth the lower-tier subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and
 - (ii) Shall not proceed with such lower-tier subcontract without the written authorization of the University.
- (3) In the case of lower-tier subcontracts at any tier, DOE, the University, the lower-tier subcontractor, and Subcontractor agree that the mutual obligations of the parties created by this clause constitute a contract between the lower-tier subcontractor and DOE with respect to those matters covered by this clause.
- (4) The Subcontractor shall promptly notify the University in writing upon the award of any lower-tier subcontract at any tier containing a patent rights clause by identifying the lower-tier subcontractor, the applicable patent rights clause, the work to be performed under the lower-tier subcontract, and the dates of award and estimated completion. Upon request of the University, the Subcontractor shall furnish a copy of such lower-tier subcontract, and, no more frequently than annually, a listing of the lower-tier subcontracts that have been awarded.
- (5) The Subcontractor shall identify all subject inventions of the lower-tier subcontractor of which it acquires knowledge in the performance of this subcontract and shall notify the Patent Counsel, with a copy to the University, promptly upon identification of the inventions.
 - (i) Preference United States industry. Unless provided otherwise, no Subcontractor that receives title to any subject invention and no assignee of any such Subcontractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Subcontractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
 - (j) Atomic energy.

- (1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under the subcontract.
- (2) Except as otherwise authorized in writing by the University, the Subcontractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under the subcontract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) Background Patents.

- (1) Background Patent means a domestic patent covering an invention or discovery which is not a subject invention and which is owned or controlled by the Subcontractor at any time through the completion of the subcontract:
 - (i) Which the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
 - (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under the subcontract.
- (2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of the subcontract by or for the Government in research, development, and demonstration work only.
- (3) The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of the subcontract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Subcontractor.
- (4) Notwithstanding subparagraph (k)(3) of this clause, the Subcontractor shall not be obligated to license any background patent if the Subcontractor demonstrates to the satisfaction of the Secretary of Energy or designee that:
 - (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or
 - (ii) the Subcontractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

- (l) Publication. It is recognized that during the course of the work under the subcontract, the Subcontractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under the subcontract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Subcontractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.
- (m) Forfeiture of rights in unreported subject inventions.
 - (1) The Subcontractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Subcontractor fails to report to Patent Counsel within six months after the time the Subcontractor:
 - (i) Files or causes to be filed a United States or foreign patent application thereon; or
 - (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.
 - (2) However, the Subcontractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Subcontractor:
 - (i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the subcontract and delivers the decision to Patent Counsel, with a copy to the University; or
 - (ii) Contending that the invention is not a subject invention, the Subcontractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the University; or
 - (iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.
 - (3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this subcontract), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

B35, Classification

In the performance of the work under the subcontract, the Subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and goods originated or generated under the subcontract in accordance with classification

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regulations and guidance furnished to the Subcontractor by the University. Every lower-tier subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or goods shall include a provision to the effect that in the performance of such subcontract or purchase order, the lower-tier subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and goods in accordance with classification regulations and guidance furnished to such lower-tier subcontractor or supplier by the Subcontractor.

B36, Foreign Ownership, Control, or Influence Over Subcontractor

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
- (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., that is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a Subcontractor by a foreign interest is such that a reasonable basis exists for concluding that the compromise of classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause "Subcontractor" means any subcontractor at any tier.
- (d) The Subcontractor shall immediately provide the University written notice of any changes in the extent and nature of FOCI over the Subcontractor that would affect the answers to the questions in the Certification submitted for the solicitation that resulted in the subcontract. Further, notice of changes in ownership or control that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the University.
- (e) In those cases where a Subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (f) If the DOE at any time determines that the Subcontractor is or is potentially subject to FOCI, the Subcontractor shall comply with such instructions that the University shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (g), in all lower-tier subcontracts under the subcontract that will require access to classified information or a significant quantity of special nuclear material. The Subcontractor shall also require such lower-tier subcontractors to submit a completed certification required in DEAR 952.204-73 and covered in University

Form 812 before award of a lower-tier subcontract. Information to be provided by a lower-tier subcontractor pursuant to this clause will be submitted to the University.

- (h) Information submitted by a Subcontractor as required pursuant to this clause shall be treated by the University and the DOE to the extent permitted by law as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a Subcontractor obtain and retain the security clearances required by the subcontract. This clause shall not operate as a limitation on the University's or the DOE's rights, including the University's right to terminate the subcontract.
- (j) The University may terminate the subcontract for default if
 - (1) The Subcontractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the University's instructions about safeguarding classified information, or make this clause apply to lower-tier subcontractors; or
 - (2) In the University's judgment, the Subcontractor creates a FOCI situation to avoid performance or a termination for default. (The University may terminate the subcontract for convenience if the Subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract cannot or chooses not to avoid or mitigate the FOCI problem.)

B37, Sensitive Foreign Nations Controls

- (a) In connection with any activities in the performance of the subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements relating to those countries which from time to time, are identified to the University by written notice from DOE as sensitive nations. The Subcontractor shall have the right to terminate according to the termination for convenience clause of these terms and conditions, this subcontract if the University determines that it is unable, without substantially interfering with its policies or without adversely effecting its performance of this work under this subcontract as a result of such notification.
- (b) The Subcontractor agrees to incorporate this clause, including this paragraph (b) in all lower-tier subcontracts under this subcontract.

B38, Unclassified Controlled Nuclear Information (UCNI)

- (a) Documents originated by the subcontractor or furnished by the Government through the University to the subcontractor in connection with this project may contain Unclassified Controlled Nuclear Information (UCNI) as defined in Section 148 of the Atomic Energy Act of 1954, as amended. Therefore, the following limitation notice is stamped or typed on the cover of the documents:

"NOT FOR PUBLIC DISSEMINATION. THIS DOCUMENT CONTAINS INFORMATION THAT MAY BE SUBJECT TO SECTION 148 OF THE ATOMIC ENERGY ACT, AS AMENDED."

The subcontractor shall be responsible for protecting such information from authorized dissemination in accordance with DOE regulations, requirement, and instructions.

(b) UCNI may only be made available to authorized individuals. "Individuals" for purposes of this subcontract, means only U. S. citizens who have a need to know in the performance of official duties or DOE authorized activities and who are employees of the Government, employees of a Government contractor or subcontractors, or employees of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract.

(c) All parties receiving UCNI shall be obliged under penalty of law to protect such information as required by 10 CFR 1017.17, such responsibility including but not limited to the following:

(1) **General.** UCNI requires protection from unauthorized dissemination. UCNI must be protected and controlled in a manner consistent with that customarily accorded other types of unclassified but sensitive information (e.g., proprietary business information, personnel, or medical records of employees, attorney-client information). The subcontractor shall establish and maintain a system for the protection of UCNI in its possession or under its control that is consistent with the physical protection standards established in this section. Each authorized individual or person granted special access to UCNI who receives, acquires, or produces UCNI or a document or material containing UCNI shall take reasonable and prudent steps to ensure that it is protected from unauthorized dissemination.

(2) **Protection in Use or Storage.** An authorized individual or a person granted special access to UCNI shall maintain physical control over any document or material containing an UCNI notice that is in use so as to prevent unauthorized access to it. When any document or material containing an UCNI notice is not in use, it must be stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office or controlled access facility).

(3) **Reproduction.** A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided that the reproduced document or material is marked and protected in the same manner as the original document or materials.

(4) **Destruction.** A document of material containing an UCNI notice may be disposed of by any method that ensure sufficiently complete destruction do prevent its retrieval (provided that the disposal is authorized by the archivist of the United State under 41 CFR 101-11.4 and by agency records disposition schedules).

(5) **Transmission.**

(A) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means that could allow access to the document or material by a person who is not an authorized individual or a person granted special access to UCNI. The address and return address must be indicated on the outside of the package.

(B) A document or material containing an UCNI notice may be transmitted by the following means:

(i) U.S. first class, express, certified or registered mail;

(ii) Any means approved for the transmission of classified documents or material;

- (iii) An authorized individual or a person granted special access to UCNI when he or she can control access to the document or material being transmitted; or
- (iv) Any other means determined by the Assistant Secretary for Defense Programs to be sufficiently secure.

(C) UCNI may be discussed or transmitted over an unprotected telephone or telecommunications circuit when required by operational considerations. More secure means of communication should be used whenever possible.

- (6) **Automated Data Processing (ADP).** UCNI may be process or produced on any ADP system that is certified for classified information or that complies with the guidelines of Office of Management and Budget Circular No. A-71, "Security of Federal Automated Information Systems, or that has been approved for such use in accordance with the provisions of applicable DOE directives.

- (d) **Civil Penalty.** Any person who violates Section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under Section 148 of the Atomic Energy Act, including these regulations, is subject to a civil penalty. The Assistant Secretary for Defense Programs may recommend to the Secretary imposition of this civil penalty, which shall not exceed \$100,000 for each violation.

B39, Disclosure of Information

- (a) It is mutually expected that the activities under the subcontract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes before the expiration or termination of all activities arising under the subcontract, that the party shall notify the other party accordingly in writing without delay. In any event, the Subcontractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE and shall promptly inform the University in writing if and when classified information becomes involved or, in the mutual judgment of the parties, it appears likely that classified information or material may become involved. In such event, the Subcontractor shall have the right to terminate performance of the work under the subcontract, and the provisions of the subcontract regarding termination for the convenience of the University shall apply.
- (b) The Subcontractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.
- (c) The term "*Restricted Data*," as used in this clause means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy. The term shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

B40, Limitation of Liability

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in the subcontract, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government (excluding the goods delivered

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under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the University's acceptance of, the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance or has established a reserve for self-insurance, covering liability for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract and to the extent of such insurance or reserve, the Subcontractor shall be liable to the University or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the University or the Government occurring after University acceptance of, and resulting from any defects or deficiencies in the goods delivered under the subcontract.

(d) The Subcontractor shall include this clause, including this paragraph (d) and supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts.

B41, Limitation of Liability - High-Value Items

(a) Notwithstanding any other provision of the subcontract and except as provided in paragraphs (b) through (e) below, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government (including the goods delivered under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or the University's acceptance of the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

- (3) A separate and complete major industrial operation connected with the performance of the subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract, the Subcontractor shall be liable to the University or the Government, to the extent of such insurance or reserve, for loss of or damage to property the University or the Government occurring after University acceptance of, and resulting from any defects or deficiencies in the goods delivered under the subcontract.
- (d)
 - (1) This clause does not diminish the Subcontractor's obligations, to the extent that they arise otherwise under the subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in the goods delivered under the subcontract.
 - (2) Unless this is a cost-reimbursement subcontract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the University, the Subcontractor shall, as determined by the University-
 - (i) Pay the University the amount it would have cost the Subcontractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (ii) Provide other equitable relief.
- (e) This clause shall not limit or otherwise affect the University's rights under clauses, if included in this subcontract, that cover-
 - (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.
- (f) In each lower-tier subcontract, except a lower-tier subcontract covered by paragraph (g) below, the Subcontractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
 - (1) In lower-tier subcontracts for high-value items only, after obtaining the Contract Administrator's advance written approval, insert this clause, including this paragraph (f).
 - (2) In lower-tier subcontracts for other end items only, insert the clause at FAR 52.246-23, Limitation of Liability.
- (g) In any lower-tier subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause B20 is appropriate, after obtaining the University's advance written approval to use this clause, the Subcontractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that lower-tier subcontract:

(This clause shall apply only to those items identified in this subcontract as being subject to this clause.)

B42, Limitation of Liability - Services

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Subcontractor is expressly responsible under the subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the University or the Government that (1) occurs after University acceptance of services performed under the subcontract, and (2) results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the University's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of-
 - (1) All or substantially all of the Subcontractor's business;
 - (2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of the subcontract.
- (c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the University or the Government through the Subcontractor's performance of services or furnishing of materials under the subcontract, the Subcontractor shall be liable to the University or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the University or the Government occurring after University acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under the subcontract.
- (d) The Subcontractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts over \$25,000.

B43, Work on University or Government Premises

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor or its lower-tier subcontractors at University or Government-owned sites or facilities, the following provisions shall apply:

- (a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each. The Subcontractor further agrees that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments

have been made for goods and labor used in connection with the work called for hereunder.

(b) Indemnify and Hold Harmless.

- (1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborer's, materialmen's, and mechanic's liens upon the real property upon which the work is located or any other property of the University or the Government; and
- (2) Promptly notify the University, in writing, of any claim, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, cause of action or suits, or liens. The Subcontractor, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) Cleaning Up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors. At the completion of the work, the Subcontractor shall remove all rubbish from and about the building and all of its and its lower-tier subcontractor's tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

- (d) Employees.** The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall immediately remove such person from work under the subcontract,

and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

- (e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workers' Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.
- (f) **Health and Safety Plan.** When specified in Section F of the subcontract schedule, the Subcontractor shall submit to the Contract Administrator a Health and Safety Plan that meets the requirements of the subcontract appendix entitled Safety and Health Requirements. The plan shall be submitted for review and approval within 30 days after the award of the subcontract. No work shall be performed on University or Government premises until approval of the plan is received by the Subcontractor.

B44, Environment, Safety, and Health Compliance and Stop Work

- (1) The Subcontractor shall take all reasonable precautions in the performance of the work under the subcontract to protect the safety and health of employees and all other persons; minimize danger from all hazards to persons, property and the environment; and shall comply with all applicable health, safety, fire protection, and environmental regulations and requirements, including notification and reporting requirements of the Subcontractor, the University, and DOE. Additionally, in the performance of work under the subcontract, the Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of its employees or any other person. Such measures or precautions shall include, but shall not be limited to, employing all safeguards and posting all warnings necessary to protect workers and others against any conditions which could be dangerous and providing a safe environment designed to prevent accidents of any kind whenever work is being performed under the subcontract. The Subcontractor shall bear the sole responsibility for Environment, Safety, and Health (ESH) compliance in connection with its work under the subcontract and shall indemnify and hold harmless the University from all claims for damages for any injury, damages or death to any person arising from the Subcontractor's work under the subcontract and from all fines, penalties or monetary damages assessed by any regulatory authority arising from the Subcontractor's work under the subcontract.
- (2) Without prejudice to any other "Stop Work" rights contained in the subcontract, any DOE, University or subcontract employee may stop work under the subcontract in accordance with the provisions of Laboratory Procedure 116, "Stop Work and Restart". The Subcontractor shall make no claim for an extension of time or compensation or damages by reason of or in connection with work stopped in accordance with this clause.

B45, Health and Safety Instructions

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- (a) DOE requires that the University review the health and safety program of each subcontractor if the subcontractor has employees on full-time assignment at the Los Alamos National Laboratory. Compliance requires the University to alert you to the following requirements:
- (1) All of the Subcontractor's local supervisors shall ensure that the University (the Contract Administrator and Laboratory Group ESH-5, Industrial Hygiene and Safety) is notified immediately of any occupational injury or illness that occurs on Laboratory-controlled premises regardless of where and when treated.
 - (2) The Subcontractor's performance shall be reviewed at intervals deemed necessary by the University to ensure that the Subcontractor is in compliance with DOE regulations.
 - (3) The University will investigate incidents occurring on Laboratory-controlled premises involving personal injury requiring more medical attention than first aid, significant damage to property of the Government or the Subcontractor or of possible public concern.
- (b) The following information shall also be furnished in writing for work to be performed at Laboratory facilities:
- (1) Average number of full-time employees required by the Subcontractor and,
 - (2) Name, address, and telephone number of the local supervisor or company official to be notified if the above employees became injured or ill.

B46, Insurance

- (a) Pursuant to paragraph (e) of the clause entitled Work on University or Government Premises, the Subcontractor shall maintain the following types and minimum levels of insurance coverage:
- (1) General Liability - Bodily injury - comprehensive form, minimum \$500,000 per occurrence.
 - (2) Workers' Compensation and Employer's Liability - Statutory limits for the state in which the work is performed.
- (b) When subcontract performance requires the use of an automobile, Automotive Liability, Comprehensive Form in the following minimum levels of coverage shall be maintained by the Subcontractor:
- (1) Property damage - \$20,000 per occurrence.
 - (2) Other - statutory requirements for the state in which the work is performed that is sufficient to meet normal and customary claims.
- (c) If the subcontract is for professional services such as those performed by doctors, lawyers, and architect-engineers, Professional Liability coverage in the following minimum levels shall be provided by the Subcontractor:

\$1 million each occurrence and \$2 million project aggregate.

(d) If aircraft are used to perform the subcontract, the Subcontractor shall provide the following types and minimum levels of insurance coverage:

- (1) Bodily injury - \$200,000 per person and \$500,000 per occurrence, excluding passenger liability.
- (2) Bodily injury, passenger liability - \$200,000 multiplied by the number of seats or passengers, whichever is greater.
- (3) Property damage - \$200,000 per occurrence.

B47, Nuclear Hazards Indemnity Agreement

(a) **Authority.** This clause is incorporated into the subcontract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter call the Act).

(b) **Definitions.** The definitions set out in the Act shall apply to this clause.

(c) **Financial protection.** Except as hereafter permitted or required in writing by DOE or the University, the Subcontractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE or the University may, however, at any time require in writing that the Subcontractor provide and maintain financial protection of such a type and in such amount as DOE or the University shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Subcontractor by DOE or the University.

(d) **Indemnification.**

- (1) To the extent that the Subcontractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the University, DOE or the University will indemnify the Subcontractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Subcontractor and other persons indemnified as are approved by DOE or the University, provided that DOE's and the University's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with the subcontract.
- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under the subcontract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) Waiver of Defenses.

- (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or government immunity.
- (2) In the event of an extraordinary nuclear occurrence which
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Subcontractor or a lower-tier subcontractor of a device utilizing special nuclear material or by-product material, during the course of the subcontract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to
 - (1) Negligence;
 - (2) Contributory negligence;
 - (3) Assumption of risk; or
 - (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary

nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

- (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the subcontract location" which phrase means any DOE facility, installation, or site at which contractual activity under the subcontract is being carried on, and any Subcontractor-owned or controlled facility, installation, or site at which the Subcontractor is engaged in the performance of contractual activity under the subcontract.

(3) The waivers set forth above

- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
- (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
- (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
- (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
- (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (b) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

- (f) **Notification and litigation of claims.** The Subcontractor shall give immediate written notice to DOE and the University of any known action or claim filed or made against the Subcontractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE through the University, the Subcontractor shall furnish promptly to DOE, copies of all pertinent papers received by the Subcontractor or filed with respect to such actions of claims. DOE and the University shall have the right to, and may collaborate with, the Subcontractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE and the University for the payment of any

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claim that DOE University may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE and the University may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE or the University, the Subcontractor shall furnish a reasonable assistance in effecting a settlement or asserting a defense.

- (g) **Continuity of DOE obligations.** The obligations of DOE and the University under this clause shall not be affected by any failure on the part of the Subcontractor to fulfill its obligation under the subcontract and shall be unaffected by the death, disability, or termination of the Subcontractor, or by the completion, termination or expiration of the subcontract.
- (h) **Effect of other clauses.** The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of the subcontract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to the subcontract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) **Civil Penalties. Reserved.**
- (j) **Criminal penalties.** Any individual director, officer, or employee of the Subcontractor or of its lower-tier subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations, or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) **Inclusion in subcontracts.** The Subcontractor shall insert this clause in any lower-tier subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in lower-tier subcontracts in which the lower-tier subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under 170c. or k. of the Act for the activities under the subcontract.

B48, Preservation of Individual Occupational Radiation Exposure Records

Individual occupational radiation exposure records generated in the performance of work under the subcontract shall be subject to inspection by the University and DOE and shall be preserved by the Subcontractor until disposal is authorized by the University or DOE or at the option of the Subcontractor delivered to the University upon completion or termination of the subcontract. If the Subcontractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

B49, Competition in Subcontracting

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The Subcontractor shall select lower-tier subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the subcontract.

B50, Notice of Total Small Business Set-Aside

(a) **Definition.** "*Small business concern*" as used in this clause means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards defined in the solicitation

(b) **General.**

- (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.
- (2) Any award resulting from the solicitation will be made to a small business concern.

(c) **Agreement.** A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the subcontract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

B51, Notice of Partial Small Business Set-Aside

(a) **Definitions.**

"*Small business concern*," as used in this clause means a concern including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards in the solicitation.

(b) **General.**

- (1) As identified elsewhere in the solicitation, a portion of this requirement has been set aside for award to one or more small business concerns.
- (2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of the solicitation.
- (3) The set-aside portion will be awarded at the highest unit price(s) in the subcontract(s) for the non-set-aside portion and adjusted to reflect transportation and other costs appropriate for the selected Subcontractor(s).
- (4) The Subcontractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside

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portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a subcontract or subcontracts are awarded for the entire set-aside portion.

- (5) The University reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

- (c) **Agreement.** For the set-aside portion of the acquisition, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the subcontract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

B52, Limitation on Subcontracting

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a subcontract, the Subcontractor agrees that in performance of the subcontract in the case of a subcontract for —
 - (1) Services (except construction). At least 50 percent of the cost of subcontract performance incurred for personnel shall be expended for employees of the concern.
 - (2) Supplies (other than procurement from a regular dealer in such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
 - (3) General construction. The concern will perform at least 15 percent of the cost of the subcontract, not including the cost of materials, with its own employees.
 - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the subcontract, not including the cost of materials, with its own employees.

B53, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns

(Incorporated by Reference (FAR 52.219-8))

B54, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan

(Incorporated by Reference)(FAR 52.219-9)

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B55, Contract Work Hours and Safety Standards Act - Overtime Compensation

- (a) **Overtime Requirements.** No Subcontractor or lower-tier subcontractor contracting for any part of the subcontract work that may require or involve the employment of laborers or mechanics (see FAR 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation, Liability for Unpaid Wages, and Liquidated Damages.** In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Subcontractor and any lower-tier subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Subcontractor and lower-tier subcontractor shall be liable to the Government (in the case of work done under subcontract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wage required by provisions set forth in paragraph (a) of this clause.
- (c) **Withholding for Unpaid Wages and Liquidated Damages.** Upon its own action or upon written request of an authorized representative of the Department of Labor, the University shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor or lower-tier subcontractor under any such subcontract; any other Federal contract with the same Subcontractor, or any Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same Subcontractor, such sums as may be determined to be necessary to satisfy any liabilities of such Subcontractor or lower-tier subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.
- (d) **Payrolls and Basic Records.**
- (1) The Subcontractor or lower-tier subcontractor shall maintain payrolls and basic payroll records during the course of subcontract work and shall preserve them for a period of three years from the completion of the subcontract for all laborers and mechanics working on the subcontract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by the Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.
 - (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Subcontractor or lower-tier subcontractor for inspection, copying, or transcription by authorized representatives of the University, the DOE, or the Department of Labor. The Subcontractor or lower-tier subcontractor shall permit such representatives to interview employees during working hours on the job.
- (e) **Subcontracts.** The Subcontractor or lower-tier subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Subcontractor shall be responsible for compliance by any lower-tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

B56, Authorization for Subcontractor's Use of Government Supply Sources

The University may issue the Subcontractor an authorization to use Government supply sources in the performance of the subcontract. Title to all property acquired by the Subcontractor under such an authorization shall vest in the Government unless otherwise specified in the subcontract. Such property shall not be considered to be Government-furnished property as distinguished from Government property. The provisions of the Property clause, except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

B57, Property Furnished "As Is"

- (a) The University makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition as when placed at the f.o.b. point specified in the solicitation as when inspected by the Subcontractor pursuant to the solicitation or, if not inspected by the Subcontractor, as when last available for inspection under the solicitation.
- (b) The Subcontractor may repair any property made available on an "as is" basis. Such repair will be at the Subcontractor's expense except as otherwise provided in this clause. Such property may be modified at the Subcontractor's expense, but only with the written permission of the University. Any repair or modification of property furnished "as is" shall not affect its title with the Government.
- (c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation and if such change will adversely affect the Subcontractor, the Subcontractor shall, upon receipt of the property, notify the University detailing the facts and, as directed by the University, either
 - (1) Return such property at the University's expense or otherwise dispose of the property; or
 - (2) Effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Subcontractor, the University shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of the subcontract. The foregoing provisions for adjustment are the exclusive remedy available to the Subcontractor, and the University shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.
- (d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the Property clause of the subcontract.

B58, Special Test Equipment

- (a) "*Special test equipment*," as used in this clause means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a subcontract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general facility testing purposes.
- (b) The Subcontractor may either acquire or fabricate special test equipment at University expense when the equipment is not otherwise itemized in the subcontract and when the prior approval of the University has been obtained. At least 30 days in advance, the Subcontractor shall provide the University with a written notice of the Subcontractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall include an estimated aggregate cost of all items and components of the equipment, the individual cost of which is less than \$5,000, and shall include the following information on each item or component of equipment costing \$5,000, or more:
- (1) The end use application and function of each proposed special test unit and identification of special characteristics and the reasons for the classifications of the test unit as special test equipment;
 - (2) A complete description of the items to be acquired and the items to be fabricated by the Subcontractor;
 - (3) The estimated cost of the item of special test equipment or component; and
 - (4) A statement that intraplant screening of the Subcontractor's and Government-owned special test equipment and components has been accomplished and that no such equipment or components are available for use in performing the subcontract.
- (c) The University may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Subcontractor. Such University-furnished items shall be subject to the Property clause, except that the University shall not be obligated to deliver such items any sooner than the Subcontractor could have acquired or fabricated them after expiration of the 30-day period for notice in paragraph (b) of this clause. However, unless the University notifies the Subcontractor of its decision to furnish the items within the 30-day period and subject to any other applicable provisions of the subcontract, the Subcontractor may proceed to acquire or fabricate the equipment or components.
- (d) In any lower-tier subcontract that provides that special test equipment or components may be acquired or fabricated for the University, the Subcontractor shall insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Subcontractor shall furnish the names of such lower-tier subcontractors to the University.
- (e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Subcontractor shall comply with paragraph (b) above. In so complying, the Subcontractor shall identify the change order that requires the proposed acquisition, fabrication, or modification.

B59, Organizational Conflicts of Interest

(a) Purpose. The purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this subcontract.

(b) Scope. The restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Subcontractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) Use of Subcontractor's Work Product.

(i) The Subcontractor shall be ineligible to participate in any capacity in Department of Energy contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract for a period of five years after the completion of this subcontract. Furthermore, unless so directed in writing by the University, the Subcontractor shall not perform any advisory and assistance services work under this subcontract on any of its products or services or the products or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this subcontract, the Subcontractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the University, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Subcontractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as Department of Energy plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the University it shall not:

- (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
- (B) compete for work for the Department of Energy based on such information for a period of six (6) months after either the completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first;
- (C) submit an unsolicited proposal to the Government or the University which is based on such information until one year after such information is released or otherwise made available to the public; and
- (D) release such information unless such information has previously been released or otherwise made available to the public by the Department of Energy or the University.

(ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The Subcontractor may use technical data it first produces under this subcontract for its private purposes consistent with subparagraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this subcontract.

(c) Disclosure after award.

- (1) The Subcontractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this subcontract, occur during the performance of this subcontract, it shall make an immediate and full disclosure of such changes in writing to the University. Such disclosure may include a description of any action which the Subcontractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The University may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of the University or the Government.
- (2) In the event that the Subcontractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the University, the University may terminate this subcontract for default.

(d) Lower-tier Subcontracts.

- (1) The Subcontractor shall include a clause, substantially similar to this clause, including this paragraph, in lower-tier subcontracts expected to exceed the simplified acquisition threshold determined in accordance with 48 CFR (FAR)

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Part 13 and involving performance of advisory and assistance services as that term is defined at 48 CFR (FAR) 37.201. The terms 'subcontract,' 'Subcontractor,' and 'University' shall be appropriately modified to preserve the University's and the Government's rights.

- (2) Prior to the award under this subcontract of any such lower-tier subcontracts for advisory and assistance services, the Subcontractor shall obtain from the proposed lower-tier subcontractor or consultant the disclosure required by 48 CFR (DEAR) 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Subcontractor shall take actions to avoid, neutralize, or mitigate to the satisfaction of the Subcontractor the organizational conflict. If the conflict cannot be avoided or neutralized, the Subcontractor must obtain the approval of the University prior to entering into the lower-tier subcontract.

- (e) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this subcontract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the University may terminate the subcontract for default, disqualify the Subcontractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this subcontract.

- (f) Waiver. Requests for waiver under this clause shall be directed in writing to the University Contract Administrator and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the University and the Government, the University may grant such a waiver in writing.

B60, Privacy Act Notification

The Subcontractor will be required to design, develop, or operate a system of records on individuals to accomplish a federal agency function subject to the Privacy Act of 1974, P.L. 93-579, as amended (5 U.S.C. 552a), and applicable agency regulations. Violations of the Act may involve the imposition of criminal penalties.

B61, Privacy Act

- (a) **Definitions.** *"Operation of a system of records,"* as used in this clause means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

"Record," as used in this clause means any item, collection or grouping of information about an individual that is maintained by or on behalf of a Government agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the person's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or a photograph.

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"System of records on individuals," as used in this clause means a group of any records under the control of any Government agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(b) The Subcontractor agrees to

- (1) Comply with the Privacy Act of 1974 (the Act) and the rules and regulations of the DOE issued under the Act in the design, development, or operation of any system of records on individuals to accomplish a Government agency function when the subcontract specifically identifies the systems of records and the design, development, or operation work that the Subcontractor is to perform;
- (2) Include the Privacy Act notification contained in the subcontract, in every solicitation and resulting lower-tier subcontract, and in every lower-tier subcontract awarded without a solicitation when the statement of work in the proposed lower-tier subcontract requires the design, development, or operation of a system of records on individuals that is subject to the ACT; and
- (3) Include this clause, including this subparagraph (3), in all lower-tier subcontracts awarded under the subcontract that requires the design, development, or operation of such a system of records.

(c) If the Act is violated, a civil action may be brought against the Government agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish a Government agency function, and criminal penalties may be imposed upon the officers or employees of the Government agency when the violation concerns the operation of a system of records on individuals to accomplish a Government agency function. For purposes of the Act, when the subcontract is for the operation of a system of records on individuals to accomplish a Government agency function, the Subcontractor and any employee of the Subcontractor is considered to be an employee of the Government agency.

B62, Termination for Convenience (Applies to Educational and Other Nonprofit Institutions)

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the University's or the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination and, except as directed by the University, the Subcontractor shall immediately proceed with the following obligations:
 - (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.

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- (3) Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
 - (4) As directed by the University, assign to the University all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University shall have the right to settle or pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; approval or ratification will be final for purposes of this clause.
 - (6) As directed by the University, transfer title (if not already transferred) and deliver to the University any information and items that, if the subcontract had been completed, would have been required to be furnished, including (i) goods produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) As directed or authorized by the University, use its best efforts to transfer or dispose of termination inventory other than that retained by the University under subparagraph (6) above, provided however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.
- (c) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly but no later than one year from the effective date of termination unless extended in writing by the University upon written request of the Subcontractor within this one-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (d) Subject to paragraph (c) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel, provided that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.

- (e) The cost principles and procedures in Subpart 31.3 of the FAR, in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, those cost principles shall apply, provided that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR Subpart 31.2 for commercial organizations shall apply to such subcontractor.
- (f) Under the terms and conditions it prescribes, the University may make partial payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
- (g) The Subcontractor has the right of appeal as provided under the Disputes clause of the subcontract, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

B63, Inspection of Research and Development (Short Form)

The University has the right to inspect and evaluate the work performed or being performed under the subcontract and the premises where the work is being performed at all reasonable times and in a manner that will not unduly delay the work. If the University performs inspection or evaluation on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these tasks.

B64, Whistleblower Protection

- (a) The Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708, with respect to work performed on University or Government Premises.
- (b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts, at all tiers, with respect to work performed on University or Government premises.

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**General Provisions
for Subcontracts
Section C**

February 1999

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Form 7500

Form 7500, Section C

Section C Clauses Apply to Fixed-Price Subcontracts.

The clauses listed below apply to fixed-price type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of the clause number in the Schedule.

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C1, Changes, Research and Development

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Drawings, designs, or specifications;
 - (2) Method of shipment or packing; or
 - (3) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C2, Changes, Services

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.)
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.

- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C3, Changes, Supplies and Services

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.)
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C4, Changes, Supplies

- (a) At any time, by written change order and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of an item or the time required for performing any part of the work under the subcontract, whether or not changed by the change order, the University shall make an equitable adjustment in (1) the subcontract price, the time of performance or both; and (2) other affected terms of the subcontract, and shall modify the subcontract accordingly.
- (c) The Subcontractor must submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the University shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

C5, Default

- (a)
 - (1) Subject to paragraphs (c) and (d) below, by written Notice of Default to the Subcontractor, the University may terminate the subcontract in whole or in part if the Subcontractor fails to
 - (i) Perform the work under the subcontract within the time specified in the subcontract or any extension;
 - (ii) Prosecute the work so as to endanger performance of the subcontract (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions of the subcontract (but see subparagraph [a][2] below).
 - (2) The University's right to terminate the subcontract under paragraphs (1)(ii) and (1)(iii) above may be exercised if the Subcontractor does not cure such failure within ten days (or more, if authorized in writing by the University) after receipt of the notice from the University specifying the failure.
- (b) If the University terminates the subcontract in whole or in part, it may acquire, under the terms and in the manner the University considers appropriate, work similar to the work terminated, and the Subcontractor will be liable to the University for any excess costs for the similar work. However, the Subcontractor shall continue the work not terminated.

- (c) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.
- (d) If the failure to perform is caused by the default of a lower-tier subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the subcontracted goods or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule or other performance requirements.
- (e) If the subcontract is terminated for default, the University may require the Subcontractor to transfer title to the Government and deliver to the University, as directed by the University, any (1) completed or partially completed work not previously delivered to and accepted by the University and (2) other property, including subcontract rights, specifically produced or acquired for the terminated portion of the subcontract. Upon direction of the University, the Subcontractor shall also protect and preserve property in its possession in which the University has an interest.
- (f) The University shall pay the subcontract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Subcontractor and the University for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The University may withhold from these amounts any sum that the University determines to be necessary to protect the University against loss from outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the Subcontractor was not in default or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the University.
- (h) The rights and remedies of the University in this clause are in addition to any other rights and remedies provided by law or under the subcontract.

C6, Federal, State, and Local Taxes

(a) **Definitions.**

"Contract date," as used in this clause, means the effective date of this subcontract or modification.

"All applicable federal, state, and local taxes and duties," as used in this article, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.

"After-Imposed Federal Tax," as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-Relieved Federal Tax," as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- (b) The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- (d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the University.
- (f) No adjustment shall be made in the subcontract price under this article unless the amount of the adjustment exceeds \$250.
- (g) The Subcontractor shall promptly notify the University of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate actions as the University directs.
- (h) The University shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

C7, Inspection of Research and Development

- (a) The Subcontractor shall provide and maintain an inspection system covering the work under the subcontract and that is acceptable to the University. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (b) The University has the right to inspect and test all work called for by the subcontract to the extent practicable at all places and times, including the period of performance, and

in any event before acceptance. The University may also inspect the premises of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.

- (c) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish without additional charge all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the University shall bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises.
- (d) The University shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the subcontract. University failure to inspect and accept or reject the work shall not relieve the Subcontractor from responsibility nor impose liability on the University for nonconforming work. Work is nonconforming when it is defective in material or workmanship or does not otherwise conform with subcontract requirements.
- (e) The University has the right to reject nonconforming work. If the Subcontractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time that the University may authorize), the University may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute under the Disputes clause.
- (f) Inspection and test by the University does not relieve the Subcontractor from responsibility for defects or other failures to meet the subcontract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the subcontract. If acceptance is not conclusive for any of these causes and in addition to any other rights and remedies provided by law or under other provisions of the subcontract, the University shall have the right to require the Subcontractor (1) at no increase in subcontract price, to correct or replace the defective or nonconforming goods at the original point of delivery or at the Subcontractor's facility at the University's election, and in accordance with a reasonable delivery schedule that may be agreed upon between the Subcontractor and the University, provided the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule; or (2) within a reasonable time after the Subcontractor's receipt of notice of defects or nonconformance, to repay such portion of the subcontract price that is equitable under the circumstances if the University elects not to require correction or replacement. When goods are returned to the Subcontractor, the Subcontractor shall bear transportation costs from the original point of delivery to the Subcontractor's facility and return to the original point of delivery when that point is not the Subcontractor's facility.

C8, Inspection of Services

- (a) **Definition.** "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the services under this subcontract. Complete records of all

inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.

- (c) The University has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspections or tests on the premises of the Subcontractor or lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with subcontract requirements, the University may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, the Subcontractor may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce the subcontract price to reflect the reduced value of the services performed.
- (f) If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, the University may (1) by subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by the University that is directly related to the performance of such service or (2) terminate the subcontract for default.

C9, Inspection of Supplies

- (a) **Definition.** "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.
- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering supplies under this subcontract and shall tender to the University for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the Subcontractor to be in conformity with subcontract requirements. As part of the system, the Subcontractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the University during subcontract performance and for as long afterwards as the subcontract requires. The University may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the subcontract work. The right to review, whether exercised or not, does not relieve the Subcontractor of the obligations under the subcontract.
- (c) The University has the right to inspect and test all supplies called for by the subcontract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The University assumes no contractual obligation to perform any inspection and test for the benefit of the Subcontractor unless specifically set forth elsewhere in the subcontract.

- (d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish, and shall require lower-tier subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the subcontract, the University shall bear the expense of University inspections or tests made at other than the Subcontractor's or lower-tier subcontractor's premises; *provided*, that in case of rejection, the University shall not be liable for any reduction in the value of inspection or test samples.
- (e)
 - (1) When supplies are not ready at the time specified by the Subcontractor for inspection or test, the University may charge to the Subcontractor the additional cost of inspection or test.
 - (2) The University may also charge the Subcontractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) The University has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. The University may reject nonconforming supplies with or without disposition instructions.
- (g) The Subcontractor shall remove supplies rejected or required to be corrected. However, the University may require or permit correction in place, promptly after notice, by and at the expense of the Subcontractor. The Subcontractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the Subcontractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the University may either
 - (1) by subcontract or otherwise, remove, replace, or correct the supplies and charge the cost to the Subcontractor or
 - (2) terminate the subcontract for default. Unless the Subcontractor corrects or replaces the supplies within the delivery schedule, the University may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.
- (i)
 - (1) If this subcontract provides for the performance of University quality assurance at source, and if requested by the University, the Subcontractor shall furnish advance notification of the time (i) when Subcontractor inspection or tests will be performed in accordance with the terms and conditions of the subcontract and (ii) when the supplies will be ready for University inspection.
 - (2) The University's request shall specify the period and method of the advance notification and the University representative to whom it shall be furnished. Requests shall not require more than 7 workdays of advance notification.
- (j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the subcontract. University failure to inspect and accept or reject the supplies shall not relieve the Subcontractor from responsibility, nor impose liability on the University for nonconforming supplies.

- (k) Inspections and tests by the University do not relieve the Subcontractor of responsibility for defects or other failures to meet subcontract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the subcontract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the University, in addition to any other rights and remedies provided by law, or under other provisions of the subcontract, shall have the right to require the Subcontractor (1) at no increase in subcontract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Subcontractor's plant at the University's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Subcontractor and the University; *provided*, that the University may require a reduction in subcontract price if the Subcontractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Subcontractor of notice of defects or nonconformance, to repay such portion of the subcontract as is equitable under the circumstances if the University elects not to require correction or replacement. When supplies are returned to the Subcontractor, the Subcontractor shall bear the transportation cost from the original point of delivery to the Subcontractor's plant and return to the original point when that point is not the Subcontractor's plant. If the Subcontractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the University may authorize in writing) after receipt of notice from the University specifying such failure, the University shall have the right by subcontract or otherwise to replace or correct such supplies and charge to the Subcontractor the cost occasioned the University thereby.

C10, Limitation of University's Obligation

- (a) Of the total price of the items listed in Section B of the schedule, the sum listed in Section F of the schedule is presently available for payment and allotted to the subcontract. It is anticipated that from time to time additional funds will be allotted to the subcontract until the total price of these items is allotted.
- (b) The Subcontractor agrees to perform or have performed work on the items up to the point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amounts payable in respect of lower-tier subcontracts and settlement costs) pursuant to paragraph (a) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount of the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point. The University will not be obligated in any event to pay or reimburse the Subcontractor in excess of the amount from time to time allotted to the subcontract, regardless of anything to the contrary in the Termination for Convenience clause of the subcontract.
- (c) It is contemplated that the funds presently allotted to the subcontract will cover the work to be performed, as limited by the provisions of (b) above, until the date specified in Section B of the subcontract. If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed until the above date, the Subcontractor will notify the University in writing when, within the next 30 days, the work will reach a point at which, in the event of termination of the subcontract pursuant to the Termination for Convenience clause of the subcontract, the total amount payable by the University (including amount payable in respect of lower-tier subcontracts and settlement costs),

pursuant to paragraph (e) of this clause, will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state

- (i) the estimated date when that point will be reached, and
- (ii) the estimated amount of additional funds required to continue performance to the above date.

After such latter notification, the Subcontractor shall advise the University in writing as to the estimated amount of additional funds which will be required for the timely performance of the subcontract for a further period as may be specified in the subcontract or otherwise agreed to by the parties. If additional funds are not allotted by the date above written, the University will, upon written request of the Subcontractor, terminate the subcontract on that date or the date set forth in the request, whichever is later, pursuant to the provisions of the Termination for Convenience clause of the subcontract.

- (d) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will agree as to the applicable period of subcontract performance that will be covered by the funds. The provisions of (b) and (c) above will apply in like manner to the additional allotted funds, and the subcontract will be amended accordingly.
- (e) If the Subcontractor incurs additional costs or is delayed in the performance of the work under the subcontract solely by reason of failure of the University to allot additional funds in amounts sufficient for timely performance of the subcontract, and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the items or in the time of delivery or both. Failure to agree to any such equitable adjustment hereunder will be a dispute within the meaning of the Disputes clause.
- (f) The University may at any time before termination and, with the consent of the Subcontractor after notice of termination, allot additional funds for the subcontract.
- (g) The provisions of this clause with respect to termination will not be deemed to limit the rights of the University under the Default clause. The provisions of this clause are limited to the work on and obligation of funds for the items set forth in (a) above. This clause will become inoperative upon the obligation of funds for the total price of the work except for rights and obligations then existing under this clause.
- (h) Nothing in the clause affects the right of the University to terminate this subcontract pursuant to the Termination for Convenience clause.

C11, Limitation on Withholding of Payments

- (a) If more than one clause or schedule provision of the subcontract authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for goods delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule provision at that time, provided that this limitation shall not apply to
 - (1) Withholdings pursuant to any clause relating to wages or hours of employees;

- (2) Withholdings not specifically provided for by the subcontract;
- (3) The recovery of overpayments; and
- (4) Any other withholding mandated by law or regulation.

C12, Lower-Tier Subcontracts

- (a) This clause applies to lower-tier subcontracts resulting from unpriced modifications to the subcontract.
- (b) *"Lower-tier subcontract"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if the Subcontractor does not have a Government approved purchasing system and if the lower-tier subcontract-
 - (1) Is proposed to exceed \$100,000; or
 - (2) Is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract for the same or related goods or services that in the aggregate are expected to exceed \$100,000.
- (c) The advance notification required by paragraph (b) above shall include
 - (1) A description of the supplies or services to be subcontracted;
 - (2) Identification of the type of subcontract to be used;
 - (3) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;
 - (4) The proposed price of the lower-tier subcontract and the Subcontractor's cost or price analysis;
 - (5) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other provisions of the subcontract;
 - (6) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract; and
 - (7) A negotiation memorandum reflecting-
 - (i) The principal elements concerning price negotiations of the lower-tier subcontract;

- (ii) The most significant considerations controlling establishment of initial or revised prices;
 - (iii) The reason cost or pricing data were or were not required;
 - (iv) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (v) The extent, if any, to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
 - (vi) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (d) The Subcontractor shall obtain the University's written consent before placing any lower-tier subcontract for which advance notification is required under paragraph (b) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.
- (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and are so identified in the schedule of the subcontract.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.
- (g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement lower-tier subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
- (h) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3. and DEAR 944.3

C13, Additional Paragraph (i) to Clause C12, Lower-Tier Subcontracts

- (i) Paragraphs (b) and (c) of Clause C12 do not apply to the lower-tier subcontracts that were evaluated during negotiations and are listed in the schedule.

C14, Payment Under Fixed-Price Research and Development Subcontracts

The University shall pay the Subcontractor the prices stipulated in the subcontract for work delivered or rendered and accepted, less any deductions provided in the subcontract, after submission of proper invoices or vouchers. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the subcontract.

C15, Payments

The University shall pay the Subcontractor, upon submission of proper invoices or vouchers, the prices stipulated in the subcontract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in the subcontract. Unless otherwise specified in the subcontract, payment shall be made on partial deliveries accepted by the University if-

- (a) The amount due on the deliveries warrants it; or
- (b) The Subcontractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total subcontract price.

C16, Property

(Incorporated by Reference) (FAR 52.245-2 Basic Clause)

C17, Substitute Paragraph (g) to Clause C16, Property, for Supplies and/or Services

(Incorporated by Reference)(FAR 52.245-2, Alternate I)

C18, Refund of Royalties

- (a) The subcontract price includes certain amounts for royalties payable by the Subcontractor or lower-tier subcontractors or both, which amounts have been reported to the University.
- (b) The term "*royalties*," as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing the subcontract or any lower-tier subcontract thereunder.
- (c) The Subcontractor shall furnish to the University, before final payment under the subcontract, a statement of royalties paid or required to be paid in connection with performing the subcontract or lower-tier subcontracts thereunder together with reasons.

- (d) The Subcontractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the subcontract price and are determined by the University to be properly chargeable to the University and allocable to the subcontract. To the extent that any royalties that are included in the subcontract price are not in fact paid by the Subcontractor or are determined by the University not to be properly chargeable to the University and allocable to the subcontract, the subcontract price shall be reduced. Repayment or credit to the University shall be made as the University directs.
- (e) If, at any time within 3 years after final payment under the subcontract, the Subcontractor for any reason is relieved in whole or in part from the payment of the royalties included in the final subcontract price as adjusted pursuant to paragraph (d) of this clause, the Subcontractor shall promptly notify the University of that fact and shall reimburse the University in a corresponding amount.
- (f) The substance of this clause, including this paragraph (f), shall be included in any lower-tier subcontract in which the amount of royalties reported during negotiation of the lower-tier subcontract exceeds \$250.

C19, Stop-Work Order

- (a) The University may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor, and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
 - (1) Cancel the stop-work order or
 - (2) Terminate the work covered by the stop-work order as provided in the Default or the Termination for Convenience clause of the subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price or both and the subcontract shall be modified, in writing, accordingly, if
 - (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
 - (2) The Subcontractor asserts a claim for the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim asserted at any time before final payment under the subcontract.

- (c) If a stop-work order is not canceled and if the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for default, the University shall allow, by equitable adjustment or other means, reasonable costs resulting from the stop-work order.

C20, Taxes - Foreign Fixed-Price Subcontracts

- (a) To the extent that the subcontract provides for furnishing goods or for performing services outside the United States, its possessions, and Puerto Rico, this clause applies instead of any Federal, State, and local taxes clause of the subcontract.

- (b) **Definitions.**

"Subcontract date," as used in this clause means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of the subcontract or modification.

"Country concerned," as used in this clause means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under the subcontract are made.

"Tax," and "taxes," as used in this clause include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause means all taxes and duties, in effect on the date of the subcontract, that the taxing authority is imposing and collecting on the transactions or property covered by the subcontract pursuant to written ruling or regulation.

"After-imposed tax," as used in this clause means any new or increased tax or duty, or any tax, other than excepted tax, that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period on the transactions or property covered by the subcontract and that the Subcontractor must pay or bear because of legislative, judicial, or administrative action taking effect after the subcontract date.

"After-relieved tax," as used in this clause means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by the subcontract but which the Subcontractor is not required to pay or bear or for which the Subcontractor obtains a refund because of legislative, judicial, or administrative action taking effect after the subcontract date.

"Excepted tax," as used in this clause means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed goods covered by the subcontract, or any tax assessed on the Subcontractor's possession of, interest in, or use of property, title to which vests in the U.S. Government.

- (c) Unless otherwise provided in the subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.
- (d) The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of the subcontract that the Subcontractor must pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.
- (e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The University shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by the University for such taxes. The University shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by the University.
- (f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor must pay or bear or does not obtain a refund of through the Subcontractor's fault, negligence, or failure to follow instructions of the University or the United States Government or to comply with the provisions of paragraph (i) below.
- (g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$100.
- (h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S.C.) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the University as the University directs.
- (i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the University, the Subcontractor, any lower-tier subcontractor, or the transactions or property covered by the subcontract are exempt under the laws of the country concerned or its political subdivisions or that the governments of the United States and of the country concerned have agreed shall not apply to expenditures in such country by or on behalf of the United States Government.
- (j) The Subcontractor shall promptly notify the University of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the University directs. At the direction of the University, the subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor, including any interest, penalty, and reasonable attorneys' fees.

C21, Termination for Convenience

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders (referred to as lower-tier subcontracts in this clause) for goods, services, or facilities, except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the University, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University or the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the University, transfer title to the Government and deliver to the University (i) the fabricated or unfabricated parts, work in process, completed work, and other goods produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the University may direct, for the protection and preservation of the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in subparagraph (6) above, provided, however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.

- (c) After expiration of the "plant clearance period" (see FAR Subpart 45.6) the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 90 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total subcontract price as reduced by (1) the amount of payments previously made and (2) the subcontract price of work not terminated. The subcontract shall be amended and the Subcontractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Subcontractor and the University fail to agree on the whole amount to be paid because of the termination of work, the University shall pay the Subcontractor the amounts determined by the University as follows, but without duplication of any amounts agreed on under paragraph (e) above:
 - (1) The subcontract price for completed goods or services accepted by the University (or sold or acquired under subparagraph [(b)][(9)] above) not previously paid for, adjusted for any saving of freight and other charges.
 - (2) The total of
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to goods or services paid or to be paid under subparagraph (f)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract if not included in subparagraph (i) above; and
 - (iii) A sum, as profit on subparagraph (i) above, determined by the University under Section 49.202 of the FAR to be fair and reasonable; however, if it

appears that the Subcontractor would have sustained a loss on the entire subcontract had it been completed, the University shall allow no profit under the subparagraph (iii) and shall reduce the settlement to reflect the indicated rate of loss.

- (3) The reasonable costs of settlement of the work terminated, including
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of termination inventory.
 - (g) Except for normal spoilage, and except to the extent that the University or the Government expressly assumed the risk of loss, the University shall exclude from the amounts payable to the Subcontractor under paragraph (f) above the fair value, as determined by the University, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a purchaser.
 - (h) The costs principles and procedures of Part 31 of the FAR shall govern all costs claimed, agreed to, or determined under this clause.
 - (i) The Subcontractor shall have the right of appeal, under the Disputes clause, from any determination made by the University under paragraph (d), (f), or (k) except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (d), (f), or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
 - (j) In arriving at the amount due the Subcontractor under this clause, there shall be deducted
 - (1) All unliquidated payments to the Subcontractor under the terminated portion of the subcontract;
 - (2) Any claim that the University has against the Subcontractor under the subcontract; and
 - (3) The agreed price for or the proceeds of sale of goods or other things acquired by the Subcontractor or sold under the provisions of this clause and not recovered by or credited to the University.
 - (k) If the termination is partial, the Subcontractor may file a proposal with the University for an equitable adjustment of the price(s) of the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the University.

- (l)
 - (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215 (b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition or a later date determined by the University because of the circumstances.
- (m) Unless otherwise provided in the subcontract or by statute, the Subcontractor shall maintain all records and documents relating to the terminated portion of the subcontract for three years after final settlement. This includes all books and other evidence bearing on the Subcontractor's costs and expenses under the subcontract. The Subcontractor shall make these records and documents available to the University or the Government at the Subcontractor's office at all reasonable times and without any direct charge. If approved by the University, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

Form 7500

**General Provisions
for Subcontracts
Section D**

February 1999

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Form 7500, Section D

Section D Clauses Apply to Cost Reimbursement Types Subcontracts.

The clauses listed below apply to cost reimbursement type subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

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D1, Allowable Cost and Payment

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks, in amounts determined to be allowable by the University in accordance with Subpart 31.2 of the FAR, as supplemented by Subpart 931.2 of the DEAR, in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.
- (b) *Reimbursing costs.*
 - (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (2) below, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only-
 - (i) Those recorded costs that, at the time of the request for reimbursement, the Subcontractor has paid by cash, check, or other form of actual payment for goods or services purchased directly for the subcontract;
 - (ii) When the Subcontractor is not delinquent in paying costs of subcontract performance in the ordinary course of business, costs incurred, but not necessarily paid, for-
 - (A) Goods issued from the Subcontractor's inventory and placed in the production process for use on the subcontract;
 - (B) Direct labor;
 - (C) Direct travel;
 - (D) Other direct in-house costs; and
 - (E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Subcontractor for obtaining reimbursement under Government contracts and University subcontracts; and
 - (iii) The amount of progress, payments that have been paid to the Subcontractor's lower-tier subcontractors under similar cost standards.
 - (2) Subcontractor contributions to any pension, profit-sharing, or funds for a plan for ownership of stock by employees that are paid quarterly or more often may be included in indirect costs for payment purposes, provided that the Subcontractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Subcontractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect cost for payment purposes until the Subcontractor actually makes the payment.

- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) below, allowable indirect costs under this subcontract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.
 - (4) Any statement in specifications or other documents incorporated in this subcontract by reference and designating performance of services or furnishing of goods at the Subcontractor's expense or at no cost to the University shall be disregarded for reimbursement of costs under this clause.
- (c) *Small Business Concerns.* A small business concern may be paid more often than every two weeks and may invoice and be paid for recorded costs for goods or services purchased directly for the subcontract, even though the small business concern has not yet paid for those goods or services.
- (d) *Final Indirect Cost Rates.*
 - (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR for the period covered by the indirect cost rate proposal.
 - (2) Within 90 days after the expiration of each of its fiscal years or by a later date approved by the University, the Subcontractor shall submit to the University and the cognizant Government Contracting Officer responsible for negotiating its final indirect cost rates and to the cognizant audit activity (1) the rates of the proposed final indirect cost rates for that period and (2) supporting cost data specifying the subcontract to which the rates apply. The proposed rates shall be based on the Subcontractor's actual cost experience for that period. The University, the Government Contracting Officer, and the Subcontractor shall establish the final indirect cost rates as promptly as practicable after receipt of the Subcontractor's proposal.
 - (3) The Subcontractor and the University or the Government Contracting Officer shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected subcontract and/or lower-tier subcontract and shall identify any with advance agreements or special terms and the applicable rate. The understanding shall not change any monetary ceiling, subcontract obligation, or specific cost allowance or disallowance provided for in this subcontract. The understanding is incorporated into the subcontract upon execution.
 - (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause of the subcontract.
- (e) *Billing Rates.* Until final, annual indirect cost rates are established for any period, the University shall reimburse the Subcontractor at billing rates established by the University or by the cognizant auditor and are subject to adjustment when the final rates are established. These billing rates
 - (1) Shall be the anticipated final rates; and

- (2) At either party's request, may be prospectively or retroactively revised by mutual agreement to prevent substantial overpayment or underpayment.
- (f) *Quick-closeout Procedures.* When the Subcontractor and the University agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.
- (g) *Audit.* At any time or times before final payment, the University may have the Subcontractor's invoices or vouchers and statements of cost audited. Any payment may be (1) reduced by amounts found by the University not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.
- (h) *Final Payment.*
 - (1) The Subcontractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work but no later than one year from the completion date (or longer, as the University may approve in writing). Upon approval of that invoice or voucher and upon the Subcontractor's compliance with all terms of the subcontract, the University shall promptly pay any balance of allowable costs and that part of the fee, if any, not previously paid.
 - (2) The Subcontractor shall pay to the University any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Subcontractor or any assignee under the subcontract to the extent that those amounts are properly allocable to costs for which the Subcontractor has been reimbursed by the University. Reasonable expenses incurred by the Subcontractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the University. Before final payment under the subcontract, the Subcontractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver
 - (i) An assignment to the University, in form and substance satisfactory to the University, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Subcontractor has been reimbursed by the University under this subcontract; and
 - (ii) A release discharging the University, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the subcontract, except
 - (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
 - (B) Claims, including reasonable incidental expenses, based upon liabilities of the Subcontractor to third parties arising out of the performance of the subcontract, provided that the claims are not known to the Subcontractor on the date of the execution of the release and that the Subcontractor gives notice of the claims in writing to the University within six years following the release date or notice of final payment date, whichever is earlier; and
 - (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Subcontractor under the patent clauses of the subcontract, excluding, however, any expenses arising from

the Subcontractor's indemnification of the University and the Government against patent liability.

D2, Modification of Clause D1, Allowable Cost and Payment for Educational Institutions

Substitute paragraph (a) below in place of paragraph (a) of clause D1.

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks in amounts determined to be allowable by the University in accordance with Subpart 31.3 of the FAR in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.

D3, Modification of Clause D1, Allowable Cost and Payment For Nonprofit Organizations Other Than Educational Institutions

Substitute paragraph (a) below in place of paragraph (a) of clause D1.

- (a) *Invoicing.* The University shall make payments to the Subcontractor when requested as work progresses but (except for small business concerns) not more often than once every two weeks in amounts determined to be allowable by the University in accordance with Subpart 31.7 of the FAR in effect on the date of the subcontract and the terms of the subcontract. The Subcontractor may submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing the subcontract.

D4, Changes, Research and Development

- (a) The University may at any time by written change order and without notice to the sureties, if any, make changes within the general scope of the subcontract in any one or more of the following:
 - (1) Drawings, designs, or specifications.
 - (2) Method of shipment or packing; or
 - (3) Place of inspection, delivery, or acceptance.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.

- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

D5, Changes, Services

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) **Time** of performance (e.g., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

D6, Changes, Supplies and Services

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (e.g., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether of not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

D7, Changes, Supplies

- (a) The University may at any time, by written change order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies are to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.
- (b) If any such change causes an increase or decrease in the estimated cost of or the time required for performance of any part of the work under the subcontract, whether or not changed by the change order or otherwise affecting any other terms and conditions of the subcontract the University shall make an equitable adjustment in (1) the estimated cost delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms; and shall modify the subcontract accordingly.
- (c) The Subcontractor must assert its right to an adjustment (hereinafter referred to as proposal) under this clause within 30 days from the date of receipt of the written change order. However, if the University decides that the facts justify the action, the University may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of the subcontract and, if the subcontract is incrementally funded, the funds allotted for the performance of the subcontract shall not be increased or considered to be increased except by specific written modification of the subcontract indicating the new estimated cost and, if the subcontract is incrementally funded, the new amount allotted to the subcontract. Until this modification is made, the Subcontractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of the subcontract.

D8, Cost Subcontract - No Fee

- (a) The University shall not pay the Subcontractor a fee for performing the subcontract.
- (b) After payment of 80 percent of the total estimated cost shown in the Schedule, the University may withhold further payment of allowable cost until a reserve is set aside in an amount that the University considers necessary to protect its interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

D9, Cost-Sharing Subcontract - No Fee

- (a) The University shall not pay the Subcontractor a fee for performing the subcontract.
- (b) After paying 80 percent of the University's share of the total estimated cost of performance shown in the Schedule, the University may withhold further payment of allowable cost until a reserve is set aside in an amount that the University considers necessary to protect its interest. This reserve shall not exceed one percent of the University's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

D10, Excusable Delays

- (a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress; and if the cause of the failure is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless
 - (1) The lower-tier subcontracted goods or services were obtainable from other sources;
 - (2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and
 - (3) The Subcontractor failed to comply reasonably with this order.
- (c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the University under the Termination clause of this subcontract.

D11, Fixed Fee

- (a) The University shall pay the Subcontractor for performing this subcontract the fixed fee specified in the schedule.
- (b) Payment of the fixed fee shall be made as specified in the schedule, provided that after payment of 85 percent of the fixed fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less.

D12, Incentive Fee

- (a) *General.* The University shall pay the Subcontractor for performing the subcontract a fee determined as provided in the subcontract.

- (b) *Target Cost and Target Fee.* The target cost and target fee specified in the schedule are subject to adjustment if the subcontract is modified in accordance with paragraph (d) below. (1) "Target cost" as used in the subcontract means the estimated cost of this subcontract as initially negotiated, adjusted in accordance with paragraph (d) below. (2) "Target fee" as used in the subcontract means the fee initially negotiated on the assumption that this subcontract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.
- (c) *Withholding of Payment.* Normally, the University shall pay the fee to the Subcontractor as specified in the schedule. However, when the University considers that performance or cost indicates that the Subcontractor will not achieve the target cost, the University shall pay on the basis of an appropriate lesser fee. When the Subcontractor demonstrates that performance or cost clearly indicates that the Subcontractor will earn a fee significantly above the target fee, the University may, at its sole discretion, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the University may withhold further payment of fee until a reserve is set aside in an amount that the University considers necessary to protect the University's interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less.
- (d) *Equitable Adjustments.* When the work under the subcontract is increased or decreased by a modification to the subcontract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to the subcontract.
- (e) *Fee Payable.*
- (1) The fee payable under the subcontract shall be the target fee increased by * cents for every dollar that the total allowable cost is less than the target cost or decreased by * cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than * percent or less than * percent of the target cost.
 - (2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased because of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause (Clause D1).
 - (3) If the subcontract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of the subcontract.
 - (4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of
 - (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Subcontractor or any lower-tier subcontractor.

- (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Subcontractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) Any direct cost attributed to the Subcontractor's involvement in litigation as required by the University pursuant to a clause of the subcontract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
 - (iv) The purchase and maintenance of additional insurance not in the target cost and required by the University, or claims for reimbursement for liabilities to third persons pursuant to the Work on University or Government Premises clause, if made a part of the subcontract.
 - (v) Any claim, loss, or damage resulting from a risk for which the Subcontractor has been relieved of liability by the Property clause; or
 - (vi) Any claim, loss, or damage resulting from a risk defined in the subcontract as unusually hazardous or defined as a nuclear risk and against which the University has expressly agreed to indemnify the Subcontractor.
- (5) All other allowable costs are included in total allowable cost for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided for in the subcontract.
- (f) *Subcontract Modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to the subcontract signed by the Subcontractor and the University.
- (g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this subcontract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

* The amounts to be entered in the blank spaces will be identified in the schedule when this clause is used.

D13, Inspection of Research and Development

(a) **Definitions.**

"Subcontractor's managerial personnel, " as used in this clause means the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or

- (3) A separate and complete major industrial operation connected with performing the subcontract.

"Work, " as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the work under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all work called for by the subcontract to the extent practicable and at all places and times, including the period of performance and in any event before acceptance. The University may also inspect the facility or facilities of the Subcontractor or its lower-tier subcontractors engaged in performance of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs any inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise provided in the subcontract, the University shall accept work as promptly as practicable after delivery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.
- (f) At any time during subcontract performance, but no later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University may require the Subcontractor to replace or correct work not meeting subcontract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)
 - (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may
 - (i) By subcontract or otherwise, perform the replacement or correction, charge to the Subcontractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the subcontract;
 - (ii) Require delivery of any undelivered goods and shall have the right to make an equitable reduction in any fixed fee paid or payable under the subcontract; or
 - (iii) Terminate the subcontract for default.

- (2) Failure to agree on the amount of increased cost to be charged the Subcontractor or to the reduction in fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause shall apply in the same manner to corrected or replacement goods as to work originally delivered.
- (j) The Subcontractor has no obligation or liability under the subcontract to correct or replace goods not meeting subcontract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the subcontract.
- (k) Unless otherwise provided in the subcontract, the Subcontractor's obligations to correct or replace Government property shall be governed by the clause pertaining to Government property.

D14, Modification of Clause D13 For a No Fee Subcontract

Substitute paragraphs (f) and (g) below in place of paragraphs (f) and (g) of Clause D12.

- (f) At any time during subcontract performance but not later than six months (or such other time as may be specified in the subcontract) after acceptance of all of the goods (other than designs, drawings, or reports) to be delivered under the subcontract, the University may require the Subcontractor to correct or replace work not meeting subcontract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) below, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Subcontractor shall not tender for acceptance any corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.
- (g) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may (1) by subcontract or other means, perform the replacement or correction and charge to the Subcontractor any increased cost, (2) require delivery of any undelivered goods, or (3) terminate the subcontract for default. Failure to agree on the amount of increased cost to be charged to the Subcontractor shall be a dispute under the Disputes clause of this subcontract..

D15, Inspection of Services

- (a) **Definition.** "Services, " as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all services called for by the subcontract, to the extent practicable at all places and times during the term of the subcontract. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with subcontract requirements, the University may require the Subcontractor to perform the services again in conformity with subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the University may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce any fee payable under the subcontract to reflect the reduced value of the services performed.
- (e) If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with subcontract requirements, the University may (1) by subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the subcontract for default

D16, Inspection of Supplies

(a) **Definitions.**

"Subcontractor's managerial personnel," as used in this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of -

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at a plant or separate location at which the subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with performing the subcontract.

"Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and when the subcontract does not include the Warranty of Data clause, data.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University covering the supplies, fabricating methods, and special tooling under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.

- (c) The University has the right to inspect and test the subcontract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The University may also inspect the plant or plants of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspection or test on the premises of the Subcontractor or lower-tier subcontractor, the Subcontractor shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the subcontract, the University shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.
- (f) At any time during subcontract performance, but no later than 6 months (or such other time as may be specified in the subcontract) after acceptance of the supplies to be delivered under the subcontract, the University may require the Subcontractor to replace or correct any supplies that are nonconforming at the time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with subcontract requirements. Except as otherwise provided in paragraph (h) below, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Subcontractor shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g)
 - (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, the University may -
 - (i) By subcontract or otherwise, perform the replacement or correction and charge to the Subcontractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the subcontract;
 - (ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the subcontract; or
 - (iii) Terminate the subcontract for default.
 - (2) Failure to agree on the amount of increased cost to be charged to the Subcontractor or to the reduction in the fixed fee shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to correct or replace, without cost to the University, nonconforming supplies, if the nonconformances are due to
 - (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel or
 - (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

- (i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.
- (j) The Subcontractor shall have no obligation or liability under the subcontract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the subcontract.
- (k) Except as otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace University furnished property shall be governed by the clause pertaining to Government property.

D17, Limitation of Cost

- (a) The parties estimate that performance of the subcontract, exclusive of any fee, will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if this is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under this subcontract within the estimated cost that, if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.
- (b) The Subcontractor shall notify the University in writing whenever it has reason to believe that
 - (1) The costs the Subcontractor expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the schedule; or
 - (2) The total cost for the performance of the subcontract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) As part of the notification, the Subcontractor shall provide the University a revised estimate of the total cost of performing the subcontract.
- (d) Except as required by other provisions of the subcontract, specifically citing and stated to be an exception to this clause
 - (1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of (i) the estimated cost specified in the schedule or, (ii) if this is a cost-sharing subcontract, the estimated cost to the University specified in the schedule; and
 - (2) The Subcontractor is not obligated to continue performance under the subcontract (including actions under the Termination clause) or otherwise incur costs in excess of the estimated cost specified in the schedule, until the University (i) notifies the Subcontractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing the subcontract. If this is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.

- (e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) above or from any person other than the Contract Administrator shall affect the subcontract's estimated cost to the University. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the estimated cost or, if the subcontract is a cost-sharing subcontract, for any costs exceeding the estimated cost to the University specified in the schedule, whether those excess costs were incurred during the course of the subcontract or as a result of termination.
- (f) If the estimated cost specified in the schedule is increased, any costs the Subcontractor incurs before the increase that exceed the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the University issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.
- (g) Change orders shall not be considered an authorization to exceed the estimated cost to the University specified in the schedule unless they contain a statement increasing the estimated cost.
- (h) If the subcontract is terminated or if the estimated cost is not increased, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract based upon the share of costs incurred by each.

D18, Limitation of Funds

- (a) The parties estimate that performance of the subcontract will not cost the University more than (1) the estimated cost specified in the schedule or, (2) if the subcontract is a cost-sharing subcontract, the University's share of the estimated cost specified in the schedule. The Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within the estimated cost that if the subcontract is a cost-sharing subcontract, includes both the University's and the Subcontractor's share of the cost.
- (b) The schedule specifies the amount presently available for payment by the University and allotted to the subcontract, the items covered, the University's share of the cost if the subcontract is a cost-sharing subcontract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the University will allot additional funds incrementally to the subcontract up to the full estimated cost to the University specified in the schedule, exclusive of any fee. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which the total amount paid and payable by the University under the subcontract approximates but does not exceed the total amount actually allotted by the University to the subcontract.
- (c) The Subcontractor shall notify the University in writing whenever it has reason to believe that the costs it expects to incur under the subcontract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the subcontract by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount then allotted to the subcontract by the University plus the Subcontractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the schedule.

- (d) Sixty days before the end of the period specified in the schedule, the Subcontractor shall notify the University in writing of the estimated amount of additional funds, if any, required to continue timely performance under the subcontract or for any further period specified in the schedule or otherwise agreed upon and when the funds will be required.
- (e) If, after notification, additional funds are not allotted by the end of the period specified in the schedule or another agreed-upon date, upon the Subcontractor's written request the University will terminate the subcontract on that date in accordance with the provisions of the Termination clause of the subcontract. If the Subcontractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the University may terminate the subcontract on that later date.
- (f) Except as required by other provisions of the subcontract, specifically citing and stated to be an exception to this clause
 - (1) The University is not obligated to reimburse the Subcontractor for costs incurred in excess of the total amount allotted by the University to the subcontract; and
 - (2) The Subcontractor is not obligated to continue performance under this subcontract (including actions under the Termination clause of the subcontract) or otherwise incur costs exceeding (i) the amount then allotted to the subcontract by the University or, (ii) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, until the University notifies the Subcontractor in writing that the amount allotted by the University has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the University to the subcontract.
- (g) The estimated cost shall be increased to the extent that
 - (1) the amount allotted by the University or,
 - (2) if the subcontract is a cost-sharing subcontract, the amount then allotted by the University to the subcontract plus the Subcontractor's corresponding share, exceeds the estimated cost specified in the schedule. If the subcontract is a cost-sharing subcontract, the increase shall be allocated in accordance with the formula specified in the schedule.
- (h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) above or from any person other than the Contract Administrator, shall affect the amount allotted by the University to the subcontract. In the absence of the specified notice, the University is not obligated to reimburse the Subcontractor for any costs exceeding the total amount allotted by the University to the subcontract, whether incurred during the course of the subcontract or because of termination.
- (i) When and to the extent that the amount allotted by the University to the subcontract is increased, any costs the Subcontractor incurs before the increase that exceed (1) the amount previously allotted by the University or, (2) if the subcontract is a cost-sharing subcontract, the amount previously allotted by the University to the subcontract plus the Subcontractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the University issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

- (j) Change orders shall not be considered an authorization to exceed the amount allotted by the University specified in the schedule unless they contain a statement increasing the amount allotted.
- (k) Nothing in this clause shall affect the right of the University to terminate this subcontract. If this subcontract is terminated, the University and the Subcontractor shall negotiate an equitable distribution of all property produced or purchased under the subcontract, based upon the share of costs incurred by each.
- (l) If the University does not allot sufficient funds to allow completion of the work, the Subcontractor is entitled to a percentage of the fee specified in the schedule equaling the percentage of completion of the work contemplated by the subcontract.

D19, Lower-Tier Subcontracts

- (a) *"Lower-tier subcontract"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. The Subcontractor shall notify the University reasonably in advance of entering into any lower-tier subcontract if
 - (1) The proposed lower-tier subcontract is of the cost-reimbursement, time-and-materials, or labor-hour type;
 - (2) The proposed lower-tier subcontract is fixed-price and exceeds either \$25,000 or five percent of the total estimated costs of the subcontract;
 - (3) The proposed lower-tier subcontract has experimental, developmental, or research work as one of its purposes; or
 - (4) The subcontract is not a facilities subcontract and the proposed lower-tier subcontract provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued in excess of \$10,000 or acquisition of any items of industrial facilities.
- (b) (1) In the case of a proposed lower-tier subcontract that (i) is of the cost-reimbursement, time-and-materials, or labor-hour type and is estimated to exceed \$25,000, including any fee, (ii) is proposed to exceed \$100,000, or (iii) is one of a number of lower-tier subcontracts with a single lower-tier subcontractor under the subcontract and for the same or related goods or services that, in the aggregate, are expected to exceed \$100,000, the advance notification required by paragraph (a) above shall include the information specified in paragraph (2) below.
 - (2) (i) A description of the goods or services to be subcontracted;
 - (ii) Identification of the type of subcontract to be used;
 - (iii) Identification of the proposed lower-tier subcontractor and an explanation of why and how the proposed lower-tier subcontractor was selected, including the competition obtained;
 - (iv) The proposed subcontract price and the Subcontractor's cost or price analysis;

- (v) The lower-tier subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions;
- (vi) The lower-tier subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of the subcontract;
- (vii) A negotiation memorandum reflecting
 - (A) The principal elements of the lower-tier subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Subcontractor did not rely on the lower-tier subcontractor's cost or pricing data in determining the price objective and in negotiating the final price.
 - (E) The extent to which it was recognized in the negotiation that the lower-tier subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (c) The Subcontractor shall obtain the University's written consent before placing any lower tier subcontract for which advance notification is required under paragraph (a) above. However, the University may ratify in writing any such lower-tier subcontract. Ratification shall constitute the consent of the University.
- (d) If the Subcontractor has an approved purchasing system and if the lower-tier subcontract is within the scope of such approval, the Subcontractor may enter into the lower-tier subcontracts described in paragraphs (a)(1) and (a)(2) above without the consent of the University, unless the subcontract is for the acquisition of major systems, subsystems, or their components.
- (e) Even if the Subcontractor's purchasing system has been approved, the Subcontractor shall obtain the University's written consent before placing lower-tier subcontracts that have been selected for special surveillance and identified in the schedule of the subcontract.

- (f) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the allowability of any lower-tier cost under the subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.
- (g) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-percentage-of-cost basis, and any fee payable under cost-reimbursement type lower-tier subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
- (h) The Subcontractor shall give the University immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to the subcontract with respect to which the Subcontractor may be entitled to reimbursement from the University.
- (i)
 - (1) The Subcontractor shall insert in each price redetermination or incentive price revision type lower-tier subcontract under the subcontract the substance of the paragraph "Quarterly Limitation on Payments Statement" from the appropriate clause: Price Redetermination - Prospective (FAR 52.216-5), Price Redetermination - Retroactive (FAR 52.216-6), Incentive Price Revision - Firm Target (FAR 52.216-16), or Incentive Price Revision Successive Targets clause (FAR 52.216-17). The substance included shall be modified in accordance with the paragraph entitled "Subcontracts" of the appropriate clause.
 - (2) The Subcontractor shall also include in each cost-reimbursement lower-tier subcontract under the subcontract a requirement that the lower-tier subcontractor insert the substance of the appropriate modified subparagraph referred to in subparagraph (1) above in each lower-tier price redetermination or incentive price revision subcontract under that lower-tier subcontract.
- (j) To facilitate small business participation in subcontracting, the Subcontractor agrees to provide progress payments on lower-tier subcontracts under the subcontract that are fixed-price subcontracts with small business concerns in conformity with the standards for customary progress payments stated in FAR 32.502-1 and 32.504(f), as in effect on the date of the subcontract. The Subcontractor further agrees that the need for such progress payments will not be considered a handicap or adverse factor in the award of subcontracts.
- (k) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.

D20, Notice of Intent to Disallow Costs

- (a) Notwithstanding any other clause of the subcontract
 - (1) At any time, the University may issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under the subcontract that have been determined not to be allowable under the subcontract terms; and

- (2) After receiving a notice under subparagraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor responds within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.
- (b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

D21, Payment for Overtime Premiums

- (a) The use of overtime is authorized under the subcontract if the overtime premium cost does not exceed the dollar amount identified in the schedule. In addition to this dollar ceiling, overtime is permitted only for work
 - (1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
 - (2) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
 - (3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in Right or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or
 - (4) That will result in lower overall costs to the University.
- (b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for subcontract completion and shall
 - (1) Identify the work unit, e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the University to evaluate the necessity for the overtime;
 - (2) Demonstrate the effect that denial of the request will have on the subcontract delivery or performance schedule.
 - (3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other University subcontracts, together with identification of each affected subcontract; and
 - (4) Provide reasons why the required work cannot be performed by using multi-shift operations or by employing additional personnel.

D22, Property

- (a) University furnished Government property.

- (1) The term "Subcontractor's managerial personnel," as used in paragraph (c) of this clause. means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-
 - (i) All or substantially all of the Subcontractor's business;
 - (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
 - (iii) A separate and complete major industrial operation connected with performing- the subcontract.
 - (2) The University shall deliver to the Subcontractor, for use in connection with and under the terms of the subcontract, the Government property described in the Schedule together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "University-furnished property).
 - (3) The delivery or performance dates for the subcontract are based upon the expectation that University furnished property suitable for use will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
 - (4) If University-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the University Contract Administrator, detailing the facts, and, as directed by the University Contract Administrator, and at University expense, either effect repairs or modification or return or otherwise dispose of the property. After completing directed action and upon written request of the Subcontractor. the University shall make an equitable adjustment as provided in paragraph (h) of this clause.
 - (5) If University-furnished property is not delivered to the Subcontractor by the required time or times, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (b) Changes in University-furnished property.
- (1) The University may, by written notice,
 - (i) decrease the University-furnished property provided or to be provided under the subcontractor
 - (ii) substitute other University-furnished property for the property to be provided by the University or to be acquired by the Subcontractor for the Government under this subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment or disposal of the property covered by this notice.

- (2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the schedule to make such property available for performing the subcontract and there is any-
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.
- (c) Title.
 - (1) The Government shall retain title to all University-furnished property.
 - (2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
 - (3) Title to all other property, the cost of which is reimbursable to the Subcontractor. shall pass to and vest in the Government upon-
 - (i) Issuance of the property for use in subcontract performance;
 - (ii) Commencement of processing of the property for use in subcontract performance; or
 - (iii) Reimbursement of the cost of the property by the University, whichever occurs first.
- (d) Use of Government property. The Government property, shall be used only for performing the subcontract under which it is provided to the Subcontractor, unless otherwise provided in the subcontract or approved by the University Contract Administrator.
- (e) Property administration-
 - (1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of the subcontract.
 - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection. and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
 - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University Contract Administrator. When any property for which the Government

is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.

- (f) Access. The Government and the University and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
 - (1) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
 - (2) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)-
 - (i) That results from a risk expressly required to be insured under the subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;
 - (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
 - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
 - (3)
 - (i) If the Subcontractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
 - (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage-
 - (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or

- (B) Occurred while an approved program or system was maintained by the Subcontractor.
- (4) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the University Contract Administrator, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.
- (5) Upon loss or destruction of, or damage to, Government property provided under the subcontract, the Subcontractor shall so notify the University Contract Administrator and shall communicate with the loss and salvage organization, if any, designated by the University Contract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the University Contract Administrator a statement of-
- (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University Contract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the University Contract Administrator, sell such property for the account of the University. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the University may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such adjustment.

- (7) The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost, of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.
- (8) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the University as directed by the University Contract Administrator.
- (9) The Subcontractor shall do nothing to prejudice the Government's or University's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the University Contract Administrator, the Subcontractor shall, at the University's expense, furnish to the Government or the University all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government or the University) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Subcontractor shall enforce for the benefit of the Government and/or the University, the liability of the lower-tier subcontractor for such loss, destruction, or damage.
- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the University may initiate an equitable adjustment in favor of the University. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Government and the University shall not be liable to suit for breach of contract for-
 - (1) Any delay in delivery of University-furnished Government property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of University-furnished Government property; or
 - (4) Failure to repair or replace Government property for which the University is responsible.
- (i) Final accounting and disposition of Government property. Upon completing the subcontract, or at such earlier dates as may be fixed by the University Contract Administrator, the Subcontractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University Contract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or paid to the University as directed by the University Contract Administrator. The foregoing provisions shall apply to scrap from Government property; provided, however,

that the University Contract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.

- (j) Abandonment and restoration of Subcontractor premises. Unless otherwise provided herein, the University-
 - (1) May abandon any Government property in place, at which time all obligations of the Government and University regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the University-furnished Government property (listed in the Schedule) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.
- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

D23, Stop-Work Order

- (a) At any time and by written order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
 - (1) Cancel the stop-work order or
 - (2) Terminate the work covered by the stop-work order as provided in the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified in writing accordingly if

- (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
- (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim submitted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the work order is terminated for default, the University shall allow by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

D24, Termination

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if
 - (1) the University determines that a termination is in the University's or the Government's interest; or
 - (2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The University shall terminate by delivering to the Subcontractor a Notice of termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination were for the convenience of the University.
- (c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.

- (4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated. in which case the University or the Government shall have the right to settle or to pay any termination settlement or proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the subcontract, the cost of which the Subcontractor has been or will be reimbursed under the subcontract.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract and that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (1) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or part in any other manner directed by the University.
- (d) After expiration of the "plant clearance period," as defined in Subpart 45.6 of the FAR, the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be

received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.

- (f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- (g) If the Subcontractor and the University fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination or work, the University shall determine, on the basis of information available, the amount, if any, due the Subcontractor and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this subcontract, not previously paid, for the performance of this subcontract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contract Administrator; however, the Subcontractor shall discontinue these costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the subcontract is not included in subparagraph (1) above.
 - (3) The reasonable costs of settlement of the work terminated, including —
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Subcontractor's termination settlement proposal may be included.
 - (4) A portion of the fee payable under the subcontract, determined as follows:
 - (i) If the subcontract is terminated for the convenience of the University, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the subcontract, but excluding subcontract effort included in the Subcontractor's termination proposals, less previous payments for fee.
 - (ii) If the subcontract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the University is to the total number of articles (or amount of services) of a like kind required by the subcontract.

- (5) If the settlement includes only fee, it will be determined under subparagraph (g)(4) above.
- (h) The cost principles and procedures in Part 31 of the FAR in effect on the date of this subcontract shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g) or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Subcontractor under this clause, the University shall deduct
 - (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;
 - (2) Any claim that the University has against the Subcontractor under the subcontract; and
 - (3) The agreed price for, or the proceeds of sale of materials, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the University.
- (k) The Subcontractor and the University must agree to any equitable adjustment in fee for the continued portion of the subcontract when there is a partial termination. The Contract Administrator shall amend the subcontract to reflect the agreement.
- (l)
 - (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary or the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

D25, Disposition of Material

Title to all goods and materials purchased with subcontract funds shall vest in the Government. The Subcontractor shall make disposition of all residual goods and materials in accordance with the instructions provided by the University.

Form 7500

**General Provisions
for Subcontracts
Section E**

February 1999

LOS ALAMOS

Los Alamos National Laboratory

Los Alamos, NM 87545

Form 7500, Section E

Section E Clauses for Time-and-Materials and Labor-Hour Subcontracts

The clauses listed below apply to time-and-materials and labor-hour subcontracts. Clauses in this section appropriate to the pricing arrangement and the Subcontractor's business category shall be incorporated into subcontracts by specific citing of clause numbers in the Schedule.

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E1, Changes

(a) At any time, by written order, and without notice to the sureties, if any, the University may make changes within the general scope of the subcontract in any one or more of the following:

- (1) Drawings, designs, or specifications;
- (2) Method of shipment or packing;
- (3) Place of delivery; or
- (4) Amount of University-furnished Government property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performing any part of the work under the subcontract, whether or not the result is specified in the change order, or otherwise affects any other terms and conditions of the subcontract, the University shall make an equitable adjustment in the ceiling price, hourly rates, delivery schedule, and other affected terms and shall modify the subcontract accordingly.

(c) The Subcontractor must assert its right to an adjustment" under this clause within 30 days from the date of receipt of the written order. However, if the University decides that the facts justify it, the University may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of the subcontract. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

E2, Excusable Delays

(a) Except for defaults of lower-tier subcontractors at any tier, the Subcontractor shall not be in default because of any failure to perform the subcontract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a lower-tier subcontractor at any tier to perform or make progress; and if the cause of the failure is beyond the control of both the Subcontractor and lower-tier subcontractor and without the fault or negligence of either, the Subcontractor shall not be deemed to be in default, unless

- (1) The lower-tier subcontracted goods or services were obtainable from other sources;
- (2) The University ordered the Subcontractor in writing to purchase these goods or services from another source; and
- (3) The Subcontractor failed to comply reasonably with this order.

- (c) Upon the request of the Subcontractor, the University shall ascertain the facts and extent of the failure. If the University determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the University under the Termination clause of this subcontract.

E3, Inspection

- (a) Definitions.

"Subcontractor's managerial personnel," as used in this clause means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;
- (2) All or substantially all of the Subcontractor's operation at any one facility or separate location at which the subcontract is being performed; or
- (3) A separate and complete major industrial operation connected with the performance of the subcontract.

"Materials" as used in this clause includes data when the subcontract does not include the Warranty of Data clause.

- (b) The Subcontractor shall provide and maintain an inspection system acceptable to the University and covering the material, fabricating methods, work, and services under the subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to the University during subcontract performance and for as long afterwards as the subcontract requires.
- (c) The University has the right to inspect and test all materials furnished and services performed under the subcontract to the extent practicable and at all places and times, including the period of performance, and in any event before acceptance. The University may also inspect the facility or facilities of the Subcontractor or any lower-tier subcontractor engaged in subcontract performance. The University shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the University performs inspection or test on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the subcontract, the University shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery unless accepted earlier.
- (f) At any time during subcontract performance but not later than six months (or such other time that may be specified in the subcontract) after acceptance of the services or materials last delivered under the subcontract, the University may require the Subcontractor to replace or correct services or materials that at time of delivery failed to

meet subcontract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under clause E10, Payments Under Time-and-Materials and Labor-Hour Subcontracts, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Subcontractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction and, when required, shall disclose the corrective action taken.

- (g)
 - (1) If the Subcontractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the University), the University may
 - (i) By subcontract or other means, perform the replacement or correction, charge to the Subcontractor any increased cost, or deduct such increased cost from any amounts paid or due under the subcontract; or
 - (ii) Terminate the subcontract for default.
 - (2) Failure to agree to the amount of increased cost to be charged to the Subcontractor shall be a dispute.
- (h) Notwithstanding paragraphs (f) and (g) above, the University may at any time require the Subcontractor to remedy by correction or replacement and without cost to the University any failure by the Subcontractor to comply with the requirements of the subcontract, if the failure is due to (1) fraud, lack of good faith, or willful misconduct on the part of the Subcontractor's managerial personnel; or (2) the conduct of one or more of the Subcontractor's employees selected or retained by the Subcontractor after any of the Subcontractor's managerial personnel have reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under the subcontract.
- (j) The Subcontractor has no obligation or liability under the subcontract to correct or replace materials and services that at time of delivery do not meet subcontract requirements, except as provided in this clause or that may be otherwise specified in the subcontract.
- (k) Unless otherwise specified in the subcontract, the Subcontractor's obligation to correct or replace Government property shall be governed by the Property clause at E12.

E4, Alternate Paragraph (e) to Clause E3 for Inspection at the Subcontractor's Facility

Paragraph (e) of Clause E3 is hereby deleted and superseded by the following.

- (e) The University shall inspect for acceptance all goods to be furnished under the subcontract at the Subcontractor's facility or facilities specified in the subcontract, or at any other facility or facilities approved for such purpose in writing by the University. The Subcontractor shall inform the University when the work is ready for inspection. The University reserves the right to charge the Subcontractor any additional cost of University inspection and test when goods are not ready at the time for which inspection and test is requested by the Subcontractor.

E5, Limitation of University's Obligation (Time-and-Materials and Labor-Hour Subcontracts)

- (a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the estimated amount set forth in the schedule, and the Subcontractor agrees to use the best efforts to perform the work specified in the schedule and all obligations under the subcontract within such estimated amount.
- (b) The sum presently available for payment and allotted to the subcontract, the goods covered by it, and the period of performance that is estimated the allotted amount will cover are specified in the schedule. It is anticipated that from time to time additional funds will be allotted to the subcontract up to the full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of subcontract performance that will be covered by the funds, and the schedule will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.
- (c) The University will not be obligated to make any payment to the Subcontractor including payment with respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to this subcontract. However, when and to the extent that the total amount allotted to this subcontract has been increased, any invoice or voucher for time or materials with respect to a period before the increase and exceeding the amount previously allotted, will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.
- (d) If funds allotted are considered by the Subcontractor to be inadequate to cover the work to be performed for the period set forth in the schedule, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the subcontract. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the schedule. Thirty days before the end of the period specified in the schedule, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation

of performance stated in paragraph (b) above for the timely performance of the work under the subcontract for such further period that may be specified in the schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the schedule or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the subcontract on that date or on a date to be specified in the request on which the Subcontractor, in the exercise of its reasonable judgment, estimates that it will have discharged its obligation to perform as stated in paragraph (b) above, whichever is later, pursuant to the provision of the Termination clause.

- (e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply in like manner to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.
- (f) At any time before termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for this subcontract.
- (g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.
- (h) For the purpose of this clause, the allotment or allotments specified in the schedule will not be decreased without the consent of the Subcontractor.
- (i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the total estimated amount of the subcontract set forth in the schedule is allotted to the subcontract, and thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

E6, Limitation of University's Obligation Under Task Ordering Agreements

- (a) It is estimated that the total payment to the Subcontractor by the University for performance of the subcontract will not exceed the ceiling price amounts of task orders issued pursuant to the subcontract or the ceiling price amount of the subcontract. The Subcontractor agrees to use its best efforts to perform the work specified in the task orders issued hereunder and all obligations under the subcontract within such estimated amounts.
- (b) The sum presently available for payment and allotted to the subcontract, the goods covered thereby, and the period of performance that is estimated the allotted amount will cover will be specified in the task orders. If task orders are not fully funded when they are issued, it is anticipated that from time to time additional funds will be allotted to such task orders up to their full estimated amount. When additional funds are allotted from time to time for continued performance of the work, the parties will agree about the applicable estimated period of performance that will be covered by the funds, and the task order will be amended accordingly. The Subcontractor agrees to perform or have performed work on the subcontract up to the point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the

total amount paid and payable by the University pursuant to paragraph (e) of the clause would, in the exercise of reasonable judgment by the Subcontractor, approximate the total amount at the time allotted to the subcontract. The Subcontractor will not be obligated to continue performance of the work beyond that point.

- (c) The University will not be obligated to make any payment to the Subcontractor including payment in respect to lower-tier subcontracts and termination settlement costs exceeding the total amount from time to time allotted to task orders under the subcontract. However, when and to the extent that the total amount allotted to a task order has been increased, any invoice or voucher for time or materials with respect to a period before to the increase and exceeding the amount previously allotted will be paid as if the invoice or voucher were for time or materials with respect to a period after the increase in amount allotted.
- (d) If the Subcontractor considers funds allotted to be inadequate to cover the work to be performed for the period set forth in a task order, the Subcontractor will notify the University in writing within the next 30 days when the work will reach a point at which, if the subcontract is terminated for the convenience of the University pursuant to the Termination clause, the total amount paid and payable by the University pursuant to paragraph (e) of the clause will approximate 85 percent of the total amount then allotted to the task order. The notice will state the estimated date when that point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the task order. Thirty days before the end of the period specified in the task order, the Subcontractor will advise the University in writing about the estimated amount of additional funds that will be required, on the basis of the obligation of performance stated in paragraph (b) above, for the timely performance of the work under the task order for such further period that may be specified in the task order or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the task order or by an agreed substitute date and upon written request of the Subcontractor, the University will terminate the task order on that date or on a date to be specified in the request on which the Subcontractor in the exercise of its reasonable judgment estimates that it will have discharged its obligation to perform as stated in paragraph (b) above, whichever is later, pursuant to the provision of the Termination clause.
- (e) When additional funds are allotted from time to time for continued performance of the work under the subcontract, the parties will be covered by such funds. The provisions of paragraphs (b), (c), and (d) above will apply similarly to the additional allotted funds and substituted date, and the subcontract will be amended accordingly.
- (f) At any time prior to termination, the University may allot additional funds for the subcontract and, with the consent of the Subcontractor and after notice of termination, may rescind the termination in whole or in part and allot additional funds for the subcontract.
- (g) Nothing in this clause will affect the right of the University to terminate the subcontract pursuant to the Termination clause.
- (h) For the purpose of this clause, the allotment or allotments specified in a task order will not be decreased without the consent of the Subcontractor.
- (i) This clause will apply and paragraph (c) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will not apply until such time that an amount equal to the ceiling price amount of each task order is allotted to each respective task order, and

thereafter paragraph (d) of the Payments Under Time-and-Materials and Labor-Hour Subcontracts clause will apply and this clause will not apply.

E7, Limitation on Withholding of Payments

If more than one clause or schedule term authorizes the temporary withholding of amounts otherwise payable to the Subcontractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or schedule term at that time, provided that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by the subcontract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the University determines that this limitation is inappropriate.

E8, Lower-Tier Subcontracts

- (a) **Definition.** *"Lower-tier subcontract,"* as used in this clause includes but is not limited to purchase orders and changes and modifications to purchase orders. Before placing any lower-tier subcontract for furnishing any of the work called for in the subcontract, the Subcontractor shall obtain the University's written consent, except for purchase of raw material or commercial stock items.
- (b) No lower-tier subcontract placed under the subcontract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under lower-tier cost-reimbursement subcontracts shall not exceed the fee limitations in Subsection 15.903(d) of the FAR.
- (c) The University and the Government reserve the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- (d) Unless the consent or approval specifically provides otherwise, neither consent by the University to any lower-tier subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination (1) of the acceptability of any lower-tier subcontract terms or conditions, (2) of the acceptability of any lower-tier subcontract price or of any amount paid under any lower-tier subcontract, or (3) to relieve the Subcontractor of any responsibility for performing the subcontract.

E9, Notice of Intent to Disallow Costs

- (a) Notwithstanding any other clause of the subcontract —
 - (1) The University may at any time issue to the Subcontractor a written notice of intent to disallow specified costs incurred or planned for incurrence under the

subcontract that have been determined not to be allowable under the terms of the subcontract; and

- (2) After receiving a notice under paragraph (1) above, the Subcontractor may submit a written response to the University with justification for allowance of the costs. If the Subcontractor does respond within 60 days, the University shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

- (b) Failure to issue a notice under this clause shall not affect the University's rights to take exception to incurred costs.

E10, Payments Under Time-and-Materials and Labor-Hour Subcontracts

Upon submission of invoices or vouchers approved by the University, the University shall pay the Subcontractor as follows.

- (a) Hourly Rate.
 - (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the University) to the University or designee. The Subcontractor shall substantiate vouchers by evidence of actual payment and by individual daily job time cards, or other substantiation approved by the University. Promptly after receipt of each substantiated voucher and except as otherwise provided in the subcontract and subject to the terms of paragraph (e) below, the University shall pay the voucher as approved by the University.
 - (2) Unless otherwise prescribed in the schedule, the University shall withhold five percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (f) below.
 - (3) Unless the schedule prescribes otherwise, the hourly rates in the schedule shall not be varied by virtue of the Subcontractor's having performed work on an overtime basis. If no overtime rates are provided in the schedule and if overtime work is approved in advance by the University, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of the subcontract. If the schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the University.
- (b) Materials and Lower-Tier Subcontracts.
 - (1) Allowable cost of direct materials shall be determined by the University in accordance with Subpart 31.2 of the FAR in effect on the date of the subcontract. Reasonable and allocable material handling costs may be included

in the charge for material to the extent that they are clearly excluded from the hourly rate. Material handling costs are composed of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Subcontractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Subcontractor shall be reimbursed for items and services purchased directly for the subcontract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. "Direct materials" as used in this clause are those materials that enter directly into the end product or that are used or consumed directly in connection with the furnishing of the end product.

- (2) The costs of lower-tier subcontracts that are authorized shall be reimbursable costs under this clause provided that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with lower-tier subcontracts shall be limited to the amounts paid to the lower-tier subcontractor in the same manner as for goods and services purchased directly for the subcontract under paragraph (1) above; however, the requirement shall not apply to a Subcontractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the lower-tier subcontract if the costs are included in the hourly rates payable under paragraph (a)(1) above.
- (3) To the extent able, the Subcontractor shall
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the University and give the reasons. Credit shall be given to the University for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor or that would have accrued except for the fault or neglect by the Subcontractor. The benefits lost without fault on the part of the Subcontractor or lost through the fault of the University shall not be deducted from gross costs.
- (c) Total Cost. It is estimated that the total cost to the University for the performance of the subcontract shall not exceed the ceiling price set forth in the schedule, and the Subcontractor agrees to use its best efforts to perform the work specified in the schedule and all obligations under the subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing the subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the schedule, the Subcontractor shall notify the University giving a revised estimate of the total price to the University for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract, the Subcontractor has reason to believe that the total price to the University for performing the subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify the University giving a revised estimate of the total price for performance of the subcontract with supporting reasons and documentation. If at any time during performing the subcontract the University has reason to believe that the work to be required in performing the subcontract will be

substantially greater or less than the stated ceiling price, the University will so advise the Subcontractor giving the then revised estimate of the total amount of effort to be required under the subcontract.

- (d) **Ceiling Price.** The University shall not be obligated to pay the Subcontractor any amount exceeding the ceiling price in the schedule, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the schedule, unless and until the University shall have notified the Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under the subcontract. When and to the extent that the ceiling price set forth in the schedule has been increased, any hours expended and material costs incurred by the Subcontractor exceeding the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (e) **Audit.** At any time before final payment under the subcontract the University may request an audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts on preceding invoices or vouchers, that are found by the University not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Subcontractor as the "completion voucher" or "completion invoice" and substantiating material and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to patents and the terms of [f] and [g] below), the University shall promptly pay any balance due the Subcontractor. The completion invoice or voucher and substantiating material shall be submitted by the Subcontractor as promptly as practicable following completion of the work under the subcontract, but in no event later than one year (or such longer period that the University may approve in writing) from the date of completion.
- (f) **Assignment.** The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, a release discharging the University and the Government, their officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under the subcontract, subject only to the following exceptions:
 - (1) Specified claims in stated amounts or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
 - (2) Claims, with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising from performing the subcontract and that are not known to the Subcontractor on the date of the execution of the release and of which the Subcontractor gives notice in writing to the University not more than six years after the date of the release or the date of any notice to the Subcontractor that the University is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of the University and the Government against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of the subcontract relating to patents.

- (g) Refunds. The Subcontractor agrees that any refunds, rebates, or credits, including any related interest, accruing to or received by the Subcontractor or any assignee that arise under the materials portion of the subcontract and for which the Subcontractor has received reimbursement shall be paid by the Subcontractor to the University. The Subcontractor and each assignee under an assignment entered into under the subcontract and in effect at the time of final payment under the subcontract shall execute and deliver, at the time of and as a condition precedent to final payment under the subcontract, an assignment to the University of such refunds, rebates, or credits, including any interest, in a form and substance satisfactory to the University.

E11, Additional Paragraph (h) to Clause E10 for Labor-Hour Subcontracts For Which No

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- (h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

E12, Property

- (a) University furnished Government property.
- (1) The term "Subcontractor's managerial personnel," as used in paragraph (c) of this clause, means any of the Subcontractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of-
- (i) All or substantially all of the Subcontractor's business;
- (ii) All or substantially all of the Subcontractor's operation at any one plant, or separate location at which the subcontract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing- the subcontract.
- (2) The University shall deliver to the Subcontractor, for use in connection with and under the terms of the subcontract, the Government property described in the Schedule together with such related data and information as the Subcontractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as "University-furnished property).
- (3) The delivery or performance dates for the subcontract are based upon the expectation that University furnished property suitable for use will be delivered to the Subcontractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Subcontractor to meet the subcontract's delivery or performance dates.
- (4) If University-furnished property is received by the Subcontractor in a condition not suitable for the intended use, the Subcontractor shall, upon receipt, notify the University Contract Administrator, detailing the facts, and, as directed by the University Contract Administrator, and at University expense, either effect

repairs or modification or return or otherwise dispose of the property. After completing directed action and upon written request of the Subcontractor. the University shall make an equitable adjustment as provided in paragraph (h) of this clause.

- (5) If University-furnished property is not delivered to the Subcontractor by the required time or times, the University shall, upon the Subcontractor's timely written request, make a determination of the delay, if any, caused the Subcontractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in University-furnished property.

- (1) The University may, by written notice,
 - (i) decrease the University-furnished property provided or to be provided under the subcontractor
 - (ii) substitute other University-furnished property for the property to be provided by the University or to be acquired by the Subcontractor for the Government under this subcontract. The Subcontractor shall promptly take such action as the University may direct regarding the removal, shipment or disposal of the property covered by this notice.
- (2) Upon the Subcontractor's written request, the University shall make an equitable adjustment to the subcontract in accordance with paragraph (h) of this clause, if the University has agreed in the schedule to make such property available for performing the subcontract and there is any-
 - (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
 - (ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) Title.

- (1) The Government shall retain title to all University-furnished property.
- (2) Title to all property purchased by the Subcontractor for which the Subcontractor is entitled to be reimbursed as a direct item of cost under the subcontract shall pass to and vest in the Government upon the vendor's delivery of such property.
- (3) Title to all other property, the cost of which is reimbursable to the Subcontractor. shall pass to and vest in the Government upon-
 - (i) Issuance of the property for use in subcontract performance;
 - (ii) Commencement of processing of the property for use in subcontract performance; or
 - (iii) Reimbursement of the cost of the property by the University, whichever occurs first.

- (4) All University-furnished property and all property acquired by the Subcontractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property", are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.
- (d) Use of Government property. The Government property, shall be used only for performing the subcontract under which it is provided to the Subcontractor, unless otherwise provided in the subcontract or approved by the University Contract Administrator.
- (e) Property administration-
 - (1) The Subcontractor shall be responsible and accountable for all Government property provided under the subcontract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of the subcontract.
 - (2) The Subcontractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of FAR Subpart 45.5.
 - (3) If damage occurs to Government property, the risk of which has been assumed by the Government under this subcontract, the University shall replace the items or the Subcontractor shall make such repairs as the University directs. However, if the Subcontractor cannot effect such repairs within the time required, the Subcontractor shall dispose of the property as directed by the University Contract Administrator. When any property for which the Government is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (f) Access. The Government and the University and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.
- (g) Limited risk of loss.
 - (1) The Subcontractor shall not be liable for loss or destruction of, or damage to, the Government property provided under the subcontract or for expenses incidental to such loss, destruction, or damage, except as provided in subparagraphs (2) and (3) below.
 - (2) The Subcontractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this subcontract (including expenses incidental to such loss, destruction, or damage)-
 - (i) That results from a risk expressly required to be insured under the subcontract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

- (ii) That results from a risk that is in fact covered by insurance or for which the Subcontractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
 - (iii) For which the Subcontractor is otherwise responsible under the express terms of the subcontract;
 - (iv) That results from willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel; or
 - (v) That results from a failure on the part of the Subcontractor, due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.
- (3) (i) If the Subcontractor fails to act as provided by subdivision (g)(2)(v) above, after being notified (by certified mail addressed to one of the Subcontractor's managerial personnel) of the University's disapproval, withdrawal of approval, or nonacceptance of the system or program it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel.
- (ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Subcontractor can establish by clear and convincing evidence that such loss, destruction, or damage-
- (A) Did not result from the Subcontractor's failure to maintain an approved program or system; or
 - (B) Occurred while an approved program or system was maintained by the Subcontractor.
- (4) If the Subcontractor transfers Government property to the possession and control of a lower-tier subcontractor, the transfer shall not affect the liability of the Subcontractor for loss or destruction of, or damage to, the property as set forth above. However, the Subcontractor shall require the lower-tier subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the lower-tier subcontractor's possession or control, except to the extent that the lower-tier subcontract, with the advance approval of the University Contract Administrator, relieves the lower-tier subcontractor from such liability. In the absence of such approval, the lower-tier subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the subcontract.
- (5) Upon loss or destruction of, or damage to, Government property provided under the subcontract, the Subcontractor shall so notify the University Contract Administrator and shall communicate with the loss and salvage organization, if any, designated by the University Contract Administrator. With the assistance of any such organization, the Subcontractor shall take all reasonable action to

protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order. and furnish to the University Contract Administrator a statement of-

- (i) The lost, destroyed, or damaged Government property;
 - (ii) The time and origin of the loss, destruction, or damage;
 - (iii) All known interests in commingled property of which the Government property is a part; and
 - (iv) The insurance, if any, covering any part of or interest in such commingled property.
- (6) The Subcontractor shall repair, renovate, and take such other action with respect to damaged Government property as the University Contract Administrator directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Subcontractor's) that separation is impractical, the Subcontractor may, with the approval of and subject to any conditions imposed by the University Contract Administrator, sell such property for the account of the University. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Subcontractor shall be entitled to an equitable adjustment in the subcontract price for the expenditures made in performing the obligations under this subparagraph (g)(6) in accordance with paragraph (h) of this clause. However, the University may directly reimburse the loss and salvage organization for any of their charges. The University shall give due regard to the Subcontractor's liability under this paragraph (g) when making any such adjustment.
- (7) The Subcontractor shall not be reimbursed for, and shall not include as an item of overhead, the cost, of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the University may have expressly required the Subcontractor to carry such insurance under another provision of the subcontract.
- (8) In the event the Subcontractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Subcontractor shall use the proceeds to repair, renovate, or replace the lost destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the University as directed by the University Contract Administrator.
- (9) The Subcontractor shall do nothing to prejudice the Government's or University's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the University Contract Administrator, the Subcontractor shall, at the University's expense, furnish to the Government or the University all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government or the University) in obtaining recovery. In addition, where a lower-tier subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the

Subcontractor shall enforce for the benefit of the Government and/or the University, the liability of the lower-tier subcontractor for such loss, destruction, or damage.

- (h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected subcontract provision in accordance with the procedures of the Changes clause. When appropriate, the University may initiate an equitable adjustment in favor of the University. The right to an equitable adjustment shall be the Subcontractor's exclusive remedy. The Government and the University shall not be liable to suit for breach of contract for-
 - (1) Any delay in delivery of University-furnished Government property;
 - (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
 - (3) A decrease in or substitution of University-furnished Government property; or
 - (4) Failure to repair or replace Government property for which the University is responsible.
- (i) Final accounting and disposition of Government property. Upon completing the subcontract, or at such earlier dates as may be fixed by the University Contract Administrator, the Subcontractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property not consumed in performing the subcontract or delivered to the University. The Subcontractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the University Contract Administrator. The net proceeds of any such disposal shall be credited to the cost of the work covered by the subcontract or paid to the University as directed by the University Contract Administrator. The foregoing provisions shall apply to scrap from Government property; provided, however, that the University Contract Administrator may authorize or direct the Subcontractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Subcontractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Subcontractor's established accounting procedures.
- (j) Abandonment and restoration of Subcontractor premises. Unless otherwise provided herein, the University-
 - (1) May abandon any Government property in place, at which time all obligations of the Government and University regarding such abandoned property shall cease; and
 - (2) Has no obligation to restore or rehabilitate the Subcontractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or subcontract completion). However, if the University-furnished Government property (listed in the Schedule) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

- (k) Communications. All communications under this clause shall be in writing.
- (l) Overseas subcontracts. If this subcontract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

E13, Stop-Work Order

- (a) At any time and by written order to the Subcontractor, the University may require the Subcontractor to stop all or any part of the work called for by the subcontract for a period of 90 days after the stop-work order is delivered to the Subcontractor and for any further period to which the parties may agree. The stop-work order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the stop-work order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop-work order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Subcontractor or within any extension of that period to which the parties shall have agreed, the University shall either
 - (1) Cancel the stop-work order or
 - (2) Terminate the work covered by the stop-work order as provided in the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the stop-work order or any extension thereof expires, the Subcontractor shall resume work. The University shall make an equitable adjustment in the delivery schedule or subcontract price, or both, and the subcontract shall be modified in writing accordingly if
 - (1) The stop-work order results in an increase in the time required for or in the Subcontractor's cost properly allocable to the performance of any part of the subcontract; and
 - (2) The Subcontractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage, provided that if the University decides the facts justify the action, the University may receive and act upon the claim submitted at any time before final payment under the subcontract.
- (c) If a stop-work order is not canceled and the work covered by the stop-work order is terminated for convenience, the University shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the work order is terminated for default, the University shall allow by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

E14, Termination

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part, if

- (1) the University determines that a termination is in the University's or the Government's interest; or
 - (2) The Subcontractor defaults in performing the subcontract and fails to cure the default within ten days (unless extended by the University) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) The University shall terminate by delivering to the Subcontractor a Notice of termination specifying whether termination is for default of the Subcontractor or for the convenience of the University, the extent of termination, and the effective date. If after termination for default, it is determined that the Subcontractor was not in default or that the Subcontractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Subcontractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination were for the convenience of the University.
- (c) After receipt of a Notice of Termination, and except as directed by the University, the Subcontractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.
 - (3) Terminate all lower-tier subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the University or the Government, as directed by the University, all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated. in which case the University or the Government shall have the right to settle or to pay any termination settlement or proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts, the cost of which would be reimbursable in whole or in part under the subcontract; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the University, transfer title to the Government (if not already transferred) and deliver to the University (i) the fabricated or unfabricated goods, work in process, completed work, and goods produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the subcontract, the cost of which the Subcontractor has been or will be reimbursed under the subcontract.
 - (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract and that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the University, any property of the types referred to in paragraph (6) above, provided, however, that the Subcontractor (1) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or part in any other manner directed by the University.
- (d) After expiration of the "plant clearance period," as defined in Subpart 45.6 of the FAR, the Subcontractor may submit to the University a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the University. The Subcontractor may request the University to remove those items or enter into an agreement for their storage. Within a reasonable time, the University, on behalf of the Government, will accept title to those items and the University will remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (e) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by the University upon written request of the Subcontractor within this one-year period. However, if the University determines that the facts justify the action, a termination settlement proposal may be received and acted on after one year or any extension. If the Subcontractor fails to submit the proposal within the allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (f) Subject to paragraph (e) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- (g) If the Subcontractor and the University fail to agree in whole or in part on the amount to be paid because of the termination or work, the University shall determine by information available the amount, if any, due the Subcontractor and shall pay the amount determined as follows:
- (1) If the termination is for the convenience of the University, include
 - (i) An amount for direct labor hours (as defined in the Schedule) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule less any hourly rate payments already made to the Subcontractor;

- (ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination not previously paid to the Subcontractor;
 - (iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the University; however, the Subcontractor shall discontinue these expenses as rapidly as practicable;
 - (iv) If not included in paragraph (i), (ii), or (iii) above, the cost of settling and paying termination settlement proposals under terminated lower-tier subcontracts that are properly chargeable to the terminated portion of the subcontract; and
 - (v) The reasonable costs of settlement of the work terminated, including
 - (A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (B) The termination and settlement of lower-tier subcontracts (excluding the amounts of such settlements); and
 - (C) Storage, transportation, and other costs incurred, reasonably necessary to protect or dispose of the termination inventory.
- (2) If the termination is for default of the Subcontractor, include the amounts computed under (1) above but omit
 - (i) Any amount for preparation of the Subcontractor's termination settlement proposal; and
 - (ii) The portion or the hourly rate allocable to profit or any direct labor hours expended in furnishing materials and services not delivered to and accepted by the University.
- (h) The cost principles and procedures in Part 31 of the FAR in effect on the date of this subcontract shall govern all costs claimed, agreed to, or determined under this clause.
- (i) The Subcontractor shall have the right of appeal, under the Disputes clause of the subcontract, from any determination made by the University under paragraph (e) or (g) above or paragraph (k) below, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (e) and failed to request a time extension, there is no right of appeal. If the University has made a determination of the amount due under paragraph (e), (g) or (k), the University shall pay the Subcontractor (1) the amount determined by the University if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Subcontractor under this clause, the University shall deduct

- (1) All unliquidated advance or other payments to the Subcontractor under the terminated portion of the subcontract;
 - (2) Any claim that the University has against the Subcontractor under the subcontract; and
 - (3) The agreed price for, or the proceeds of sale of materials, or other things acquired by the Subcontractor or sold under this clause and not recovered by or credited to the University.
- (k) If the termination is partial, the Subcontractor may file with the University a proposal for an equitable adjustment of the price(s) for the continued portion of the subcontract. The University shall make any equitable adjustment agreed upon. Any proposal by the Subcontractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the University.
- (l)
- (1) Under the terms and conditions it prescribes, the University may make partial payments and payments against costs incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Subcontractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary or the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Subcontractor to the date the excess is repaid. Interest shall not be charged on any excess payment because of a reduction in-the Subcontractor's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (m) The provisions of this clause relating to fee do not apply if the subcontract does not include a fee.

E15, Disposition of Material

Title to all goods and materials purchased with subcontract funds shall vest in the Government. The Subcontractor shall make disposition of all residual goods and materials in accordance with the instructions provided by the University.